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# NATURAL RESOURCES ON INDIAN LANDS

## HEARINGS

BEFORE THE

SPECIAL COMMITTEE ON INVESTIGATIONS

OF THE

## SELECT COMMITTEE ON INDIAN AFFAIRS
## UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

MAY 9, 1989

WASHINGTON, DC

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# NATURAL RESOURCES ON INDIAN LANDS

TUESDAY, MAY 9, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
SPECIAL COMMITTEE ON INVESTIGATIONS,
*Washington, DC.*

The special committee met, pursuant to notice, at 10:12 a.m. in room 628, Dirksen Senate Office Building, Hon. Dennis DeConcini (chairman of the special committee) presiding.

Present: Senators DeConcini, McCain, and Daschle.

Also present: Senator Nickles.

Staff present: Kenneth Ballen, J. Sedwick Sollers III, Nathan Marceca, Sharon Scott, Kathy Momot, and Mary Ellen Fleck.

## STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DECONCINI. We'll come to order. Senator McCain is on his way, I'm advised. And his staff advised me that he has no objection to us proceeding.

We will start our hearings today, our second round of hearings today through this week and next week. The first two days this week are going to be involved in the allegations and records relating to theft of oil from Indian Country and allottees. We will then spend two days on the royalty payment process and the Mineral Management Service involvement, or lack thereof, in this process.

It is our hope that this week and next week we will be able to wind up our hearings. We have reserved another week, or a part thereof, in early June if we have follow-up information before we will commence our findings, conclusions, and recommendations.

This morning we will begin on the natural resources on Indian Lands with Chuck Norman, the accountant for the Special Committee on Investigations, who will give us a background, and Wick Sollers will do the questioning.

Mr. Norman.

[Witness sworn.]

Senator DECONCINI. Do you have an opening statement or are we going to go right to questions?

Mr. SOLLERS. I think I have some questions for Mr. Norman. Thank you.

Senator DECONCINI. Mr. Sollers.

Mr. SOLLERS. Thank you, Mr. Chairman.

## STATEMENT OF CHARLES A. NORMAN, ACCOUNTANT, SPECIAL COMMITTEE ON INVESTIGATIONS

Mr. SOLLERS. Good morning, Mr. Norman.

Mr. NORMAN. Good morning.

Mr. SOLLERS. Please state your full name for the record.

Mr. NORMAN. Charles A. Norman.

Mr. SOLLERS. And how are you employed, Mr. Norman?

Mr. NORMAN. I'm an accountant for the Special Committee on Investigations.

Mr. SOLLERS. And what is your education?

Mr. NORMAN. I have a Bachelor of Science Degree from the University of Colorado in accounting.

Mr. SOLLERS. And what background do you have, Mr. Norman, in oil and gas?

Mr. NORMAN. My background includes 10 years with a National Accounting and Consulting Firm, almost exclusively dealing with oil and gas issues.

Mr. SOLLERS. Now, Mr. Norman, has the committee received allegations concerning the underpayment of Indian royalties?

Mr. NORMAN. Yes, sir.

Mr. SOLLERS. What are Indian royalties?

Mr. NORMAN. Royalties involve a share of the gross production of minerals free of the cost of production.

Mr. SOLLERS. How many oil leases have Indian royalties associated with them?

Mr. NORMAN. Approximately 5,000.

Mr. SOLLERS. And what would be the gross amount of Indian royalties paid in a year?

Mr. NORMAN. Approximately $125 million annually.

Mr. SOLLERS. Now, Mr. Norman, are the owners of Indian mineral interests all tribes themselves?

Mr. NORMAN. No, sir. A substantial number of those leases are owned by Indian allottees.

Mr. SOLLERS. What is an Indian allottee?

Mr. NORMAN. An individual Indian mineral owner.

Mr. SOLLERS. And that would be as opposed to a tribal entity, is that correct?

Mr. NORMAN. That's correct.

Mr. SOLLERS. Now, who pays royalties?

Mr. NORMAN. Royalties may be paid, typically, by one of two parties, the producer, that is the company actually extracting the minerals from the lease, or the purchaser of those minerals, who takes title to the product at the lease site, usually.

Mr. SOLLERS. Now, a purchaser would be an entity that's actually coming to a lease site and buying the minerals, is that correct?

Mr. NORMAN. That's correct.

Mr. SOLLERS. And let's talk in terms of crude oil here. If a purchaser is not paying the royalty, would the purchaser know that a lease is an Indian lease, typically?

Mr. NORMAN. No, he would not.

Mr. SOLLERS. And why is that?

Mr. NORMAN. If the purchaser is not paying the royalty, then the purchaser is unaware of who the mineral interest owners are.

Mr. SOLLERS. And in that instance, who would be paying the royalty, assuming the purchaser, the entity picking up the oil at the lease is not paying the royalty?

Mr. NORMAN. That would be the producer typically.

Mr. SOLLERS. If a purchaser was taking oil, not paying for the oil, not documenting the oil, in other words, stealing oil, would that effect the royalty payments, even though the purchaser was not the entity paying the royalties?

Mr. NORMAN. Yes, sir, it would.

Mr. SOLLERS. Why is that?

Mr. NORMAN. Well, let me explain that by way of example. If a royalty owner had a one-eighth royalty, then every eight barrels of oil would result in one barrel of royalty, therefore, to the extent that royalty was under-reported or royalties not paid on those volumes, the royalty owner would suffer one-eighth of that loss.

Mr. SOLLERS. In other words, I take it royalties are paid on the amount of oil actually purchased, documented to be purchased from a lease, is that true?

Mr. NORMAN. That's true.

Mr. SOLLERS. And if there is not sufficient documentation, or if someone is actually taking oil and not documenting it, that's going to reduce the royalties, is that also correct?

Mr. NORMAN. Absolutely.

Mr. SOLLERS. Now, do various Government agencies have oversight responsibility on Indian royalties, or over Indian royalties?

Mr. NORMAN. Yes. Three agencies of the Department of Interior share that responsibility.

Mr. SOLLERS. What are the three agencies?

Mr. NORMAN. Those include the Minerals Management Service, Bureau of Land Management and the Bureau of Indian Affairs.

Mr. SOLLERS. And what are their individual responsibilities?

Mr. NORMAN. Well, very briefly, Minerals Management Service is responsible for the collection, distribution and auditing of Indian mineral revenues. The Bureau of Land Management is responsible for conducting lease site inspection, enforcing security, and monitoring lease development. And the Bureau of Indian Affairs is responsible for the issuance of the leases.

Mr. SOLLERS. Which entity has actual inspection responsibility, oversight responsibility of the physical leases?

Mr. NORMAN. That would be the Bureau of Land Management.

Mr. SOLLERS. Which entity has law enforcement authority over theft and related issues on oil and gas leases?

Mr. NORMAN. My understanding is that the committee is investigating that very question as we speak.

Mr. SOLLERS. Is there substantial confusion over that issue?

Mr. NORMAN. Substantial confusion exists, yes.

Mr. SOLLERS. Is it known to whom theft would be reported?

Mr. NORMAN. Theft would be reported to the Bureau of Land Management.

Mr. SOLLERS. Has the committee looked into whether a sufficient system of follow-up exists for such reports?

Mr. NORMAN. Yes, we have.

Mr. SOLLERS. And what have we determined, do you know?

Mr. NORMAN. We've determined that the system of follow-up is inadequate.

Mr. SOLLERS. Now, the committee has, as we've already said, perceived allegations of underpayment of Indian royalties, correct?

Mr. NORMAN. That's correct.

Mr. SOLLERS. Now, is one of the possible causes of the underpayment of Indian royalties the theft of oil and gas?

Mr. NORMAN. Yes, sir.

Mr. SOLLERS. And has the committee looked into allegations of the theft of oil and gas?

Mr. NORMAN. Yes, we have.

Mr. SOLLERS. Are there different types of theft?

Mr. NORMAN. Well, two types of theft are predominant. One would be what the industry terms smash and grab, and that would include simply unauthorized access to the lease site and removal of crude oil, typically via truck. Other more subtle techniques include primarily mismeasurement, and by that I mean the misstating of volume and quality of oil taken.

Mr. SOLLERS. And in fact, the smash and grab, the basic, raw theft, where a tanker truck comes in and fills up a tank at night, unauthorized, is that a large percentage of the theft that's out there?

Mr. NORMAN. To the contrary, that's a very small percentage of this problem.

Mr. SOLLERS. Now, you mentioned the mismeasurement of oil. Who actually performs the measuring of oil?

Mr. NORMAN. The purchaser's representative is responsible for that function.

Mr. SOLLERS. How is oil removed from a lease site?

Mr. NORMAN. Well, it can be removed one of two ways, truck or via pipeline that runs adjacent to the lease site.

Mr. SOLLERS. And what is the entity that is removing that oil?

Mr. NORMAN. The purchaser.

Mr. SOLLERS. Now, in both instances when the oil is removed by the pipeline which is adjacent or contiguous to the lease site, and when the oil is removed by truck, is the oil gauged?

Mr. NORMAN. Yes, sir, it is.

Mr. SOLLERS. And by gauged, do we mean the various tests and measurements that go into measuring the oil?

Mr. NORMAN. That's correct, Mr. Sollers.

Mr. SOLLERS. Do substantial opportunities exist for mismeasurement?

Mr. NORMAN. Absolutely.

Mr. SOLLERS. And why is that, Mr. Norman?

Mr. NORMAN. Well, a number of reasons. Many of these lease sites are very remote, and also we've determined that in many cases the producer's representative is not there to witness the actual gauging of the oil, that is the purchaser or his representative performs these measurements without being accompanied by a witness for the producer.

Mr. SOLLERS. Is it basically an honor system?

Mr. NORMAN. That's correct.

Mr. SOLLERS. Are there many checks and balances on the measurement system?

Mr. NORMAN. Well, if the measurement occurs with—if the purchaser's representative performs that gauging function alone, once the oil leaves the lease site, it's virtually impossible to reconstruct the quantities that were there initially. So, it's difficult to recreate those volumes.

Mr. SOLLERS. And I believe you've already testified, frequently there is no producer representative present when the purchaser comes on and measures the oil, is that correct?

Mr. NORMAN. That's not uncommon. That's correct.

Mr. SOLLERS. Are there various methods which are used by purchasers to mismeasure oil, at least potentially?

Mr. NORMAN. Yes, there are a number of potential mismeasurement techniques that could result in volumes being overstated or understated.

Mr. SOLLERS. What do those methods include?

Mr. NORMAN. Well, primarily a misstatement of the temperature, that is the oil, of course, expands or contracts with heat or cold, and all oil is adjusted to 60 degrees for transaction purposes. So the temperature factor is critical.

Second, all crude oil contains a certain amount of impurities. I think the industry term is sediment and water, and those must be quantified on the lease site. And finally, of course, the opening and closing gauges, that is the volume measured by a steel tape in the lease tanks is the third component that plays a vital role.

Mr. SOLLERS. Those opening and closing gauges is simply the physical measurement of the oil in the tank, is that true?

Mr. NORMAN. Yes. sir.

Mr. SOLLERS. And when you mentioned S&W, or sediment and water, that's impurity which is actually deducted from what the purchaser has to pay on a tank of oil, is that also correct?

Mr. NORMAN. That's correct.

Mr. SOLLERS. Has the committee found that these techniques have been used in combination to allow purchasers to take oil for which they are not paying?

Mr. NORMAN. Yes, we have.

Mr. SOLLERS. I'd like at this time to turn to Mr. Merritt.

[Witness sworn.]

## STATEMENT OF FRED M. MERRITT, INVESTIGATOR, JUDICIAL DISTRICT NO. 23, OKLAHOMA

Mr. SOLLERS. Mr. Merritt, I would ask you to state your full name for the record.

Mr. MERRITT. Fred M. Merritt.

Mr. SOLLERS. How are you employed, sir?

Mr. MERRITT. I'm employed as an investigator for the District Attorney, Judicial District Number 23, State of Oklahoma.

Mr. SOLLERS. And what are your duties, or what have been your duties for the DA in Oklahoma?

Mr. MERRITT. I am to investigate any Part I offense or case that is presented to the District Attorney's Office for prosecution in the event that work is needed on the case.

Mr. SOLLERS. Has your work included the investigation of oil and gas theft?

Mr. MERRITT. It has.

Mr. SOLLERS. Now, have you been assigned to the Special Committee on Investigations?

Mr. MERRITT. Yes, sir.

Mr. SOLLERS. For approximately how long, sir?

Mr. MERRITT. Since March of this year.

Mr. SOLLERS. What has been your experience in the oil patch?

Mr. MERRITT. I was employed by the Big Heart Crude Oil Corporation from 1980 until the end of 1986.

Mr. SOLLERS. In what capacity, sir?

Mr. MERRITT. I was an investigator in the loss control area.

Mr. SOLLERS. And in 1986 what did you do?

Mr. MERRITT. At the end of 1986 the Koch Oil Corporation bought out Big Heart Corporation and at that time I was offered employment by Koch if I would like to move to Wichita, which I declined. I took a job with the District Attorney's Office as an investigator. Koch came back and offered me a second job within the area where I was living at that time, which I declined.

Mr. SOLLERS. Do you have experience as a gauger?

Mr. MERRITT. Yes, sir, I have.

Mr. SOLLERS. And in fact, did you draw up the gauging specifications for Big Heart Oil when you were working for them?

Mr. MERRITT. Yes, sir, I did.

Mr. SOLLERS. Now, Mr. Merritt, have you prepared a slide presentation on gauging crude oil at the lease site?

Mr. MERRITT. Yes, sir, I have.

Mr. SOLLERS. And if you could proceed and tell us what the first slide shows?

[Showing slide.]

Mr. MERRITT. This first slide is at the wellhead where the oil is produced. The oil is produced at the wellhead and it goes from there to a treating facility, which you see in the upper lefthand portion of the picture. That treating facility can be anything from a heater treater to a separator. And from there it goes to the production tanks or the lease storage tanks, which is on the righthand side of the picture.

Mr. SOLLERS. The tanks on the righthand side is where oil that has come out of the ground is actually stored until a purchaser picks it up, is that true?

Mr. MERRITT. That's correct.

Mr. SOLLERS. And in some instances, is the oil taken off by pipeline?

Mr. MERRITT. It's taken off by pipeline or by transport truck.

Mr. SOLLERS. And in both instances is the oil measured by a gauger?

Mr. MERRITT. It's supposed to be.

Mr. SOLLERS. And that's an individual who is a representative of the purchaser, is that correct?

Mr. NORMAN. That is correct, yes, sir.

Mr. SOLLERS. Please proceed.

[Slide shown.]

Mr. MERRITT. These are the tools or instruments that the gauger uses when he's testing the oil. The oil has to be measured for quantity and tested for quality.

Mr. SOLLERS. What are the primary tools that are used by a gauger?

Mr. MERRITT. The primary tools will be an oil thief. This is a core type thief. It is a round, cylindrical shaped object that is used to take a representative sample from any location within the tank.

[Showing oil thief.]

Mr. MERRITT. The next instrument is a gauge line. This is nothing more than a steel measuring tape which is marked off in normally one-eighth inch increments. It's used to measure the height or depth of oil in the tank.

[Showing gauge line.]

Mr. SOLLERS. Now, with regard to the oil thief, which is that instrument that you first held up, how is that actually used to obtain the sample? Give a brief description.

Mr. MERRITT. This instrument is a round, cylindrical shaped, it's hollow. It has a rotating valve, or a trap door on the bottom. This trap door can be actuated by merely bumping the unit on the bottom of the tank if you want to get a sample from there, or it can be closed at any location in the tank by the trip latch, like this.

[Demonstrates device.]

Mr. SOLLERS. And then, I take it, the sample is brought up by the gauger, is that true?

Mr. MERRITT. A sample is brought up and then you can get your representatives samples from there.

Mr. SOLLERS. Go ahead, please proceed.

Mr. MERRITT. This is the wood back thermometer. It is a thermometer. It's a cup case thermometer, but it's referred to as a wood back thermometer in the oil field. It is nothing more than a thermometer that is attached to a piece of wood and has a brass cup on the bottom. This is designed to test the temperature or check the temperature of that tank of crude oil for volume purposes.

[Showing wood-backed thermometer.]

Mr. SOLLERS. And why is the temperature important? Explain that, if you would.

Mr. MERRITT. As Mr. Norman stated earlier, oil expands when it gets warmer and contracts or shrinks when it gets colder. This expansion amounts to approximately 1 percent for every 22 degrees in temperature change. Probably an easy explanation would be that if you had 100 barrels of crude oil in a tank and it was 60 degrees, if you heated that oil another 22 degrees to 82 degrees, you would have approximately one more barrel of volume, or you would have 101 barrels. That's why it's so important to know the temperature so you will know the correct volume.

Mr. SOLLERS. When oil is purchased, is the temperature of the oil corrected back to a certain temperature?

Mr. MERRITT. Yes, sir, it's corrected back to 60 degrees so that you will know what the volume is, no matter what the temperature is.

Mr. SOLLERS. And I take it when the actual purchase of oil is calculated, there is a formula and temperature is included in that formula, is that true?

Mr. MERRITT. That's correct, sir.

Mr. SOLLERS. Please proceed.

[Slide shown.]

Mr. MERRITT. This is a hydrometer, which is used to measure the gravity, or check for the gravity, or viscosity or thickness of the oil. It has a thermometer built into this instrument to test the temperature of this representative sample with, at the same time you're checking the gravity.

Mr. SOLLERS. Now, was that representative sample obtained with the oil thief?

Mr. MERRITT. Yes, sir.

Mr. SOLLERS. And that's the instrument that you showed first, is that correct?

Mr. MERRITT. That's correct. That's the purpose of taking a sample throughout the tank.

Mr. SOLLERS. And what is the importance of obtaining the gravity of the oil?

Mr. MERRITT. As oil gets warmer, it gets thinner. And as it gets colder, it gets thicker. So there again, you have to know the exact temperature of the crude oil that you're testing the gravity on, or testing the weight or density. Because, again, it is corrected at 60 degrees also as in the volume temperature.

Mr. SOLLERS. But as to gravity itself, why is that important? Is that also a calculation?

Mr. MERRITT. It's a calculation. It's a quality test is what it is. Most of your refineries will pay a premium or a higher price for your different gravities of crude oil. They will pay a lower price for lower gravities, a higher price for higher gravities.

Mr. SOLLERS. Thank you.

[Showing slide.]

Mr. MERRITT. This is a heated centrifuge. In an oil field it's known as a grind-out machine. You put your samples in this machine and you turn the machine on and the trunnion spins the samples out at a high RPM which separates the sediment and water, or the impurities, from the sample of oil, so that you will know what the representative amount of impurities are in that oil.

Mr. SOLLERS. And that's called—the lingo for that is S&W?

Mr. MERRITT. Yes, sir. That's correct.

Mr. SOLLERS. And it's sediment and water, is that correct?

Mr. MERRITT. Yes, that's correct.

Mr. SOLLERS. And I take it that the sediment and water content is deducted from the actual volume of the oil, is that correct?

Mr. MERRITT. That's correct. The sediment and water is a nonmerchantable product and it's something that you don't want in your oil. That is why it's deducted.

Mr. SOLLERS. What do you do in here?

[Showing slide.]

Mr. MERRITT. Here we're going to start the gauging procedures on the tank. This is done by actually taking a sample of the crude oil at the upper portion of the tank.

Mr. SOLLERS. Okay.

Mr. MERRITT. Next we're going to immerse the wood back thermometer in the tank of oil so we can do a temperature check on the oil. This is for the purposes of figuring the volume. Next, we're going to get a representative sample of oil from the tank for the purpose of checking the gravity, or the weight or density of the oil.

Mr. SOLLERS. Where are you standing in these pictures? And I take it this is a picture of you doing the actual gauging, is that correct?

Mr. MERRITT. Yes, sir, that's correct.

Mr. SOLLERS. Where are you actually standing on this lease site?

Mr. MERRITT. I'm standing on what is referred to as a catwalk. It is next to the thief hatch. The thief hatch is the opening in the tank that is designed for the purposes of taking your measurements when testing the oil.

Mr. SOLLERS. Is this at the top of the tank?

Mr. MERRITT. Yes, sir, that's correct.

[Showing slide.]

Mr. MERRITT. This is the sample of crude oil that we'd use to determine the representative gravity from. You select the proper hydrometer, immerse it in the oil. While the hydrometer is equalizing to the temperature of the sample, we'll take the gauge line and we'll drop the gauge line into the tank, and we will get what is called a top gauge.

Mr. SOLLERS. What is the top gauge?

Mr. MERRITT. This is just the measurement of the depth of oil, or height of oil that is in the tank.

After determining the top gauge, we'll take a gravity reading from the hydrometer. After the gravity reading we check the temperature of the sample. Then we go back into the tank with the thief and get a sample from the lower portion of the tank. This is for the purposes of determining the S&W content.

[Showing slide.]

Mr. MERRITT. After the sample has been taken, this has allowed sufficient time for the wood back thermometer to equalize to the tank temperature. We bring the wood back thermometer up and take a temperature reading from it. This is for the purposes of figuring the volume.

Mr. SOLLERS. Now, what do you mean by allowing the thermometer to equalize to tank temperature?

Mr. MERRITT. This thermometer should be left in the tank long enough so that it will become—it will show the temperature of the oil that's in the tank, itself.

Mr. SOLLERS. As opposed to the temperature in the air before the thermometer went into the tank, is that right?

[Showing slide.]

Mr. MERRITT. That's correct, sir.

After we get our samples, and we have determined the gravity and temperature of the oil, we move to the heated centrifuge or grind-out machine.

Mr. SOLLERS. And that's where you're determining the S&W content in the oil, is that true?

Mr. MERRITT. Yes, sir, that's determining the suspended S&W content in the oil.

[Showing slide.]

Mr. MERRITT. We put our samples, transfer them into the grind-out tubes, which fit in the grind-out machine. The machine is closed and turned on, spun out for a designated time, and there we determine the S&W or sediment and water content in our representative samples.

Mr. SOLLERS. On that slide, where is the S&W content?

Mr. MERRITT. It's in the very lower portion of the tube.

Mr. SOLLERS. And is that a calculable amount there?

Mr. MERRITT. Yes, sir, it is. That tube is marked off in increments in tenths of percent. And you just count up to what line that the impurities touch the tube and figure it from there.

Mr. SOLLERS. What would that amount of S&W be, if you can tell from there?

Mr. MERRITT. It would be approximately five-tenths of one percent. I would say it would be about three to four-tenths percent water and approximately one-tenth of 1 percent sediment.

Mr. SOLLERS. Now, Mr. Merritt, should gauging be accurate?

Mr. MERRITT. Yes, sir, very accurate.

Mr. SOLLERS. Should any error in gauging fall within a narrow range?

Mr. MERRITT. Any error at all would be in a very narrow range.

Mr. SOLLERS. Is guesswork involved in gauging oil?

Mr. MERRITT. Not when it's done properly, no, sir.

Mr. SOLLERS. I take it you're using instruments which are accurate or should be?

Mr. MERRITT. Accurate and they are required to be tested for accuracy at various occasions.

Mr. SOLLERS. Are there guidelines to follow?

Mr. MERRITT. Yes, sir, there are.

Mr. SOLLERS. By the way, how long does that whole gauging process take?

Mr. MERRITT. The gauging process should take approximately 15 to 20 minutes, in that time frame.

Mr. SOLLERS. And how frequently would gauging be done? Does that depend on how often you're picking up the oil?

Mr. MERRITT. It should be done every time that you purchase a tank of oil. Or every time you pick up or run a tank of oil it should be done.

Mr. SOLLERS. Now, one particular exercise that we did not show there is the actual gauging of the oil after the oil has been loaded up, is that correct?

Mr. MERRITT. That's correct.

Mr. SOLLERS. What happens after you, as a gauger, have unloaded that tank of oil, either into the pipeline or into the transport truck?

Mr. MERRITT. Not all the oil is removed from the tank due to the settled S&W that comes out of the oil while it's waiting to be transported or bought. There is a small amount of oil that is left in the tank, and you have to go back in after you have pumped the tank down, or the tank has been sucked down, and take a measurement of what is left. This is called a bottom gauge.

Mr. SOLLERS. So your top gauge is taken before you unload the oil from the tank to see how much oil is sitting in the tank, correct?

Mr. MERRITT. That's correct.

Mr. SOLLERS. And after you unload whatever you're taking out of the tank, you go back in with the gauge and see how much oil is left still in the tank, is that true?

Mr. MERRITT. That's true.

Mr. SOLLERS. Now, how are these readings recorded?

Mr. MERRITT. They're recorded on what is called a run ticket. It is the purchaser's representative which the gauger fills out a multi-copy ticket, normally, with all the workings of the crude oil written on the ticket, or recorded on the ticket.

Mr. SOLLERS. What is typically done with that ticket?

Mr. MERRITT. One copy of the ticket is usually left for the producer, and the rest are sent back, or a copy may be kept by the gauger for his records, and the rest are sent back to the producer—I'm sorry, to the purchaser, to his office.

Mr. SOLLERS. Now, as we've heard testimony, frequently no one is at the lease site when the gauger, the purchaser representative comes on the site, is that true?

Mr. MERRITT. That's true.

Mr. SOLLERS. What does the gauger do with the ticket in that instance?

Mr. MERRITT. In that instance it's been my experience that normally the gauger will meet with the pumper at a later date, or either the same day, or the next day, or the day after and he'll give him the tickets, copies of his tickets from the tanks that he had run for him.

Mr. SOLLERS. Sometimes the tickets will in fact, just be left in a jar, is that also correct?

Mr. MERRITT. That's true, yes.

Mr. SOLLERS. Now, you mentioned that there are standards or guidelines for the measuring of crude oil, correct?

Mr. MERRITT. Yes, sir, that's correct.

Mr. SOLLERS. Does the American Petroleum Institute, also known as API, have standards or guidelines?

Mr. MERRITT. They are the organization that develops the guidelines, yes, sir.

Mr. SOLLERS. And have those guidelines been adopted by the Bureau of Land Management?

Mr. MERRITT. Yes, sir, they have.

Mr. SOLLERS. Mr. Merritt, are there various methods used by crude oil purchasers to take oil, and by that I mean, take oil they have not documented, which they have not paid for.

Mr. MERRITT. Yes, sir, there are.

Mr. SOLLERS. What are some of those methods?

Mr. MERRITT. Oil field slang for these methods would be cutting the top gauge——

Mr. SOLLERS. What does that mean?

Mr. MERRITT. This means that what you're going to show on your paperwork is a lesser figure, a smaller figure than what was actually in the tank, or what you actually gauged.

Another method is called bumping the bottom gauge. This just means that you recorded a false reading for the bottom gauge, that you showed on your paperwork that there was more oil left in the tank than you actually left.

Mr. SOLLERS. Both of which would be to the purchasers' benefit, is that correct?

Mr. MERRITT. Yes, sir.

Mr. SOLLERS. How about with S&W content?

Mr. MERRITT. The same with S&W, since S&W is figured and deducted from the volume of the tank. And it would be to the purchasers' benefit to record the S&W content at a higher rate than what it actually is.

Mr. SOLLERS. Because S&W content will be deducted from the purchaser's payments, correct?

Mr. MERRITT. That's correct.

Mr. SOLLERS. How about temperature?

Mr. MERRITT. Since the volume of the crude oil is figured by temperature, it would be to the purchaser's benefit to record a higher temperature gauge. This is called bumping the temperature. If you record a higher temperature, say the oil is a higher temperature than what it actually is, then actually you're stealing crude oil by that method also.

Mr. SOLLERS. Is gravity also sometimes manipulated?

Mr. MERRITT. Yes, it is. Since more money is paid, the oil that's higher gravity oil is worth more than the lower gravity, the purchaser can show or claim that the oil was a lower gravity and pay less for the oil than what it actually was.

Mr. SOLLERS. Do API guidelines allow for any of these methods that you've just described?

Mr. MERRITT. No, sir, they don't.

Mr. SOLLERS. How about industry practice? Are these methods acceptable?

Mr. MERRITT. No, sir, they're not.

Mr. SOLLERS. That concludes my questions for Mr. Merritt. I think I'd like to go back to Mr. Norman now and then turn over questions for both of them after that.

Mr. Norman, has the committee received allegations concerning the undocumented taking of oil by Koch Industries?

Mr. NORMAN. Yes, Mr. Sollers, we have.

Mr. SOLLERS. Did the committee open an investigation into those allegations?

Mr. NORMAN. Yes.

Mr. SOLLERS. Describe, if you would, what Koch Industries is, what kind of company it is?

Mr. NORMAN. Koch Industries is a privately held company. Headquarters are in Wichita, Kansas. The Koch Industries and its subsidiaries are engaged in all aspects of the oil and gas business, including refining and processing, exploration and production, gathering, purchasing, selling, trading and transportation.

Mr. SOLLERS. What size company is it?

Mr. MERRITT. Recent figures for sales from 1988 show approximately $10 billion, net income of approximately $400 million, assets as of December 31, 1988 of approximately $3.9 billion.

Mr. SOLLERS. What was the annual profit earned by Koch last year in crude oil sales?

Mr. NORMAN. Approximately $30 million.

Mr. SOLLERS. Is Koch Oil, a subsidiary of Koch Industries, one of the largest payers of Indian royalties?

Mr. NORMAN. It is among the top ten payers of Indian royalties, yes.

Mr. SOLLERS. Do those royalties relate almost exclusively to Indian allottees?

Mr. NORMAN. Yes, sir.

Mr. SOLLERS. And again, that's individual Indian royalty owners?

Mr. NORMAN. That's correct.

Mr. SOLLERS. Would that relate primarily to Oklahoma?

Mr. NORMAN. Yes.

Mr. SOLLERS. Is Oklahoma where most of the Indian allottees are actually living?

Mr. NORMAN. That's right.

Mr. SOLLERS. Does Koch Oil also purchase oil for which they do not have royalty responsibility?

Mr. NORMAN. Yes.

Mr. SOLLERS. Meaning they purchase oil, but do not actually pay the royalties, is that correct?

Mr. NORMAN. Yes, they do not have the royalty paying responsibility.

Mr. SOLLERS. That royalty paying responsibility would lie with the producer in those instances?

Mr. NORMAN. By agreement, yes.

Mr. SOLLERS. Nevertheless, any mismeasurement by Koch would affect the royalty owner, whether or not they have a royalty responsibility, is that true?

Mr. NORMAN. That's right. The royalty payment responsibility would have no impact on that.

Mr. SOLLERS. In other words, if they're not documenting the actual purchase of oil, there would be a reduction in the amount of royalties paid, is that true?

Mr. NORMAN. Yes.

Mr. SOLLERS. Now, have various, what we'll call over-short numbers been obtained by the committee through a subpoena?

Mr. NORMAN. Yes.

Mr. SOLLERS. And what is over and short?

Mr. NORMAN. Over and short refers to volumes of oil. In the case of over would be volumes of oil received in excess of volumes paid for, and short would be the opposite. That is volumes received in an amount less than volumes paid for.

Mr. SOLLERS. So if a company was a thousand barrels over for a particular month, what would that mean?

Mr. NORMAN. That would mean that for that particular month they received a thousand barrels of oil in excess of the quantity that the producers were paid for.

Mr. SOLLERS. Now, is Oklahoma, in particular, important for our purposes anyway?

Mr. NORMAN. Due to the concentration of allottees, yes.

Mr. SOLLERS. Now is there some variance to be expected in recording over and short numbers in oil purchases?

Mr. NORMAN. It is, in fact, an inexact process, but oil, as Mr. Merritt has demonstrated can be measured with a tolerance that is quite, quite fine.

Mr. SOLLERS. Now, in fact, would it be expected that there would be some shortage in the process?

Mr. NORMAN. Intuitively one would expect some shortages due to this normal fluid loss and the transportation, or gathering of the oil.

Mr. SOLLERS. Evaporation, et cetera?

Mr. NORMAN. That's correct.

Mr. SOLLERS. But that would be a relatively small amount, is that true?

Mr. NORMAN. A very small amount.

Mr. SOLLERS. Now, at your direction, Mr. Norman, was a chart prepared which indicates the over-short numbers for five of the largest purchasers of crude oil in Oklahoma?

Mr. NORMAN. Yes.

[Chart showing over/short reports appears in appendix:]

Mr. SOLLERS. Does it show the over-short numbers for those five purchasers?

Mr. NORMAN. It does.

Mr. SOLLERS. I'd like you to indicate, if you would, for the year 1986 in Oklahoma, what were Koch Industries numbers on overages?

Mr. NORMAN. Approximately 241,000 barrels over, with a value of approximately $3.6 million.

Mr. SOLLERS. What was the next highest competitors numbers on overages in Oklahoma for 1986?

Mr. NORMAN. That appears to be Phillips Petroleum, 908 barrels, approximately $14,000.

Mr. SOLLERS. And Mr. Norman, were these figures obtained from all of the five companies through U.S. Senate subpoena?

Mr. NORMAN. That's correct.

Mr. SOLLERS. For the year 1987, what are Koch's over numbers in Oklahoma?

Mr. NORMAN. Approximately 239,000 barrels over with a value of approximately $4.3 million.

Mr. SOLLERS. How is that value calculated, by the way?

Mr. NORMAN. Based on the transaction price of the oil at the time.

Mr. SOLLERS. And that price will fluctuate at times, is that true?

Mr. NORMAN. Yes, it does.

Mr. SOLLERS. And for 1988, Koch's overage numbers are what?

Mr. NORMAN. It's 142,000 barrels over with a value of approximately $2.2 million.

Mr. SOLLERS. The next highest competitor showed overage numbers of what?

Mr. NORMAN. For 1988, it would be Conoco with 375 barrels, and about $12,000 in value.

Mr. SOLLERS. How about as to company-wide? In 1986, Koch's overage numbers are what?

Mr. NORMAN. Approximately 804,000 barrels with a value of about $12.2 million.

Mr. SOLLERS. The next highest competitor shows overage numbers of what?

Mr. NORMAN. That would be Phillips with overages company-wide of about 10,000 barrels, with about $150,000.

Mr. SOLLERS. How about as to 1987, Koch Company-wide overage figures?

Mr. NORMAN. That's 671,000 barrels, approximately, with a value of about $11.9 million.

Mr. SOLLERS. The next highest competitor shows overages of what?

Mr. NORMAN. That's 11,468 barrels with a value of about $203,000.

Mr. SOLLERS. And in 1988, what are the overage figures for Koch company-wide?

Mr. NORMAN. It's 474,000 barrels, value of about $7.1 million.

Mr. SOLLERS. The next highest competitor shows what overage figures?

Mr. NORMAN. It's 12,165 barrels, value of about $204,000.

Senator DECONCINI. Ask him to name the company.

Mr. SOLLERS. What company was that last one?

Mr. NORMAN. Conoco.

Mr. SOLLERS. Mr. Norman, is there a substantial variance between the Koch figures and the figures of any of the other competitors?

Mr. NORMAN. Yes.

Mr. SOLLERS. Mr. Norman, are those figures indicative of corporate intent to take more oil than it's paying for?

Mr. NORMAN. That's one of the—yes, that's what it appears to be.

Mr. SOLLERS. Were the overall volumes, total volumes purchased by these five companies comparable?

Mr. NORMAN. Based on the information we were able to gather, there are differences in the total volumes handled, but not enough to affect the conclusions.

Mr. SOLLERS. By the way, you stated that Koch's profit in crude oil was $30 million last year?

Mr. NORMAN. That's right.

Mr. SOLLERS. And as this chart shows, what were their overage figures, the value of their overage figures in 1988?

Mr. NORMAN. About $7 million.

Mr. SOLLERS. A large percentage of their profit, is that not correct?

Mr. NORMAN. Yes.

Mr. SOLLERS. Mr. Chairman, that concludes my questions for Mr. Norman and Mr. Merritt.

Senator DECONCINI. Thank you, Mr. Sollers.

Senator McCain is with us. Does he have an opening statement, or care to pursue any questions?

Senator MCCAIN. Thank you, Senator.

Mr. Norman, let me just get a couple of things clear for this Senator. You said there are approximately 5,000 leases on allottee land and in Indian Country, is that accurate?

Mr. NORMAN. Allottee and tribal land, yes.

Senator MCCAIN. And do you know the breakdown, roughly, what that is?

Mr. NORMAN. Between tribal and allottee?

Senator MCCAIN. Yes.

Mr. NORMAN. In numbers of leases, Senator?

Senator MCCAIN. Yes, or percentages. A third in allottees, or two-thirds, or do we have any idea?

Mr. NORMAN. I'm guessing, but I can give you an educated guess, I think.

Senator MCCAIN. You can supply that for the record. What is your educated guess?

Mr. NORMAN. I'd say it would be about three-quarters of those in the numbers of leases would be allotted, and about one-quarter would be tribal in terms of the numbers.

Senator MCCAIN. And an allottee is an individual, right?

Mr. NORMAN. Yes.

Senator MCCAIN. And also Native American, of course.

Now, the Mineral Management Service, explain to us for the record, exactly what is that agency?

Mr. NORMAN. Minerals Management Service is an arm of the Department of the Interior that is responsible for collecting, accounting for, and distributing Federal and Indian mineral revenues. The principal location of that function is Lakewood, Colorado. And they receive, account for, and distribute about $125 million annually in Indian mineral revenues.

Senator MCCAIN. And the responsible head of that is the Secretary of the Interior?

Mr. NORMAN. Yes, sir.

Senator MCCAIN. And is that an appointed position, the head of the MMS?

Mr. NORMAN. I believe so.

Senator MCCAIN. Now, you said that the BLM has the enforcement and security, and other obligations. And you said it is not known who is responsible for theft, is that correct?

Mr. NORMAN. Yes, Senator.

Senator MCCAIN. You said it's confusing.

Mr. NORMAN. There was substantial amount of confusion about that issue.

Senator MCCAIN. And that the system of follow-up is inadequate. Can you give us a little background as to how confusing this is? What did you—where did you find it confusing?

Mr. NORMAN. Well, the confusion exists on who has the authority for law enforcement, and since a system is not in place to follow-up on allegations, the usual result is that nothing is done. The Bureau of Land Management, in fact, is unable to adequately perform even the basic site inspection responsibilities on a recurring basis.

Senator MCCAIN. That would be their primary responsibility, the BLM is to look at the site and see what's happening there, and to attempt to audit it and check on it, right?

Mr. NORMAN. Yes, Senator, that's correct.

Senator MCCAIN. And in the course of your investigation, on behalf of the Special Committee, what did you find that the BLM did do, or did not do in relation to this?

Mr. NORMAN. Well, due to the large number of leases involved, and the Bureau of Land Management simply—their site inspections are infrequent. Sometimes not occurring for months, or even longer periods on a specific site. As I mentioned, these are very remote sites. Secondly, many of the BLM personnel are unfamiliar with the types of mismeasurement techniques that we have described here this morning. And of course, if they're not there when the measuring occurs, it's impossible for them to have a handle on what's going on out there.

Senator MCCAIN. The BLM would actually have to know when the tank was going to be measured and be there to check on the

measurement, is that right? They couldn't come two days later and check it?

Mr. NORMAN. Absolutely not.

Senator MCCAIN. And did you find that the BLM did do any onsite checking?

Mr. NORMAN. Not to my knowledge—actually witnessing the gauging of oil?

Senator MCCAIN. Yes.

Mr. NORMAN. No, not to my knowledge.

Senator MCCAIN. And in the course of—if the BLM did check and audit at the same time that the tank was being gauged and measured, what would they do with this information? Would they send it to the MMS? Is that what they would do with it?

Mr. NORMAN. Well, theoretically, that's what they would do. Since we weren't able to document a case of that actually happening, I can only—that is what has been represented to us as what would happen, but we haven't seen it happen.

Senator MCCAIN. I'm just trying to get a picture here of the process of somebody going out and checking when Mr. Merritt is there, if he was working for a purchaser, and the BLM man shows up and he would be there with you. Is that how it should work, Mr. Merritt?

Mr. MERRITT. Yes, if it was done——

Senator MCCAIN. If he would check the records as you're checking them, right?

Mr. MERRITT. Yes, sir.

Senator MCCAIN. And what would be your understanding? Where would he send those? Would he send what his findings were, assuming that they concurred with yours, would he send them to the MMS?

Mr. MERRITT. I don't know.

Senator MCCAIN. Okay.

Now, one instrument I didn't quite understand there, and that's the thief——

Mr. MERRITT. Yes, sir.

Senator MCCAIN. What's it called? What's the name of that?

Mr. MERRITT. It's an—in oil field slang it's called a thief.

Senator MCCAIN. A thief, okay.

Mr. MERRITT. Yes, sir.

Senator MCCAIN. Now, if you put that down at the bottom of the barrel, and close it off, you're going to pick up far less quality oil, is that right?

Mr. MERRITT. There are two types of S&W in the oil. It's suspended and settled, and the settled falls to the bottom.

Senator MCCAIN. So, do you want both of them?

Mr. MERRITT. Yes, sir. You need——

Senator MCCAIN. You test both of those?

Mr. MERRITT. Yes, sir. You need a representative sample of both.

Senator MCCAIN. I just wanted to understand that. Fine.

Now, Mr. Norman, did you do the comparison of these figures as pointed out in the chart here, the exhibit here? Did you compare these company figures?

Mr. NORMAN. Yes.

Senator MCCAIN. And these were all acquired through subpoena?

Mr. NORMAN. Yes, Senator, that's right.

Senator MCCAIN. And were there any other companies that you acquired information from?

Mr. NORMAN. Yes.

Senator MCCAIN. About how many?

Mr. NORMAN. Approximately 30.

Senator MCCAIN. Total, or 30 additional ones?

Mr. NORMAN. Approximately 30 total.

Senator MCCAIN. So this is just a representative example of those 30, is that correct?

Mr. NORMAN. That's right.

Senator MCCAIN. So, in the case of your exhibit, our exhibit there, under Sun Oil Company, in 1987 they actually paid for 11,711 barrels of oil that they did not receive, is that correct?

Mr. NORMAN. That's correct, Senator.

Senator MCCAIN. Now, do you know in the industry, or Mr. Merritt, do you know, and of course that's company-wide, it's 13,997 barrels for an equivalent of $248,000 plus. Do you know, Mr. Merritt, or Mr. Norman, what the companies can do when that figure is determined? Can they go back to the producers, or are they just out once they send their bill and they get paid and then it's gone?

Mr. MERRITT. No, in most cases it's a loss. This loss is incurred in several things from poor measurement to theft.

Senator MCCAIN. That's my next question, so now, just hypothetically taking the Sun Company there, or one of these other ones that show that they got less barrels, what is your best judgment, Mr. Merritt, of how would that occur? Would that occur from—obviously the person who's measuring it is making a mistake——

Mr. MERRITT. Yes, sir.

Senator MCCAIN. And I know you have no particular idea of knowing for certain whether that's an employee of Sun Company, who paid the royalty in this case, or someone who was picking it up, the independent. Can you help us understand how they would permit themselves to not get 11,000 barrels.

Mr. MERRITT. You'd have to pay. You'd have to pay for 11,000 barrels——

Senator MCCAIN. Which they didn't get.

Mr. MERRITT. My experience would be that they would need a closer accountability at the purchase level or at the gauger level, where it is actually tested, perhaps a better sealing program, more extensive training in doing their gauging accurately, and perhaps installation of meters in the pipeline system or at their trucking facilities to see that they are getting their oil to where they're wanting to take it.

Senator DECONCINI. Mr. Norman, let me clear the record here. How did you get the figures, say first the Koch Company figures for 1987, Oklahoma-wide, where they have 239,206 barrels of excess oil there, and how did you get the Sun Company 11,711, where they were short and 239,000 where Koch was over. How did you derive those figures?

Mr. NORMAN. Those are based on company supplied documents.

Senator DECONCINI. So, explain those documents. The first document, is that the gauging, the testing at the tank?

Mr. NORMAN. Well, these were—Senator, these were summaries of that process.

Senator DECONCINI. So, you got those from the company, they showed you that there were 239,000 barrels taken out of the tanks at the oil sites, is that correct?

Mr. NORMAN. Yes.

Senator DECONCINI. And then you had figures that showed that when it was delivered it was another figure?

Mr. NORMAN. Yes.

Senator DECONCINI. And this is the difference between that.

Mr. NORMAN. That's right.

Senator DECONCINI. Okay.

So this is from their own company figures that demonstrate that they got 239,000 barrels that they didn't pay for, is that correct?

Mr. NORMAN. Yes.

Senator DECONCINI. And the same is true, then on the Sun Company, which had 11,711 barrels that they did pay for but they didn't receive. That figure is taken from their documents, which list where the tank is, where the production is, and what's measured there. That document, with all that top gauge information down, is compared to the measurement made at time of delivery, and that's where you come up with that figure?

Mr. NORMAN. That's right.

Senator DECONCINI. Thank you.

Senator MCCAIN. Mr. Chairman, I just have one question.

Senator DECONCINI. Yes, Senator McCain.

I am finished.

Senator MCCAIN. Has the committee received allegations that other companies have been engaged in the same kind of activities?

Mr. NORMAN. Yes.

Senator MCCAIN. And they have not been fully investigated because of the limitations of the resources of the committee, is that correct?

Mr. NORMAN. That's correct, Senator.

Senator MCCAIN. And we will be referring these allegations to the appropriate authorities at the appropriate time, is that correct?

Mr. NORMAN. Yes, sir.

Senator MCCAIN. Thank you.

Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Senator McCain. I think it's very important for that point to be made, that this committee is not a grand jury to follow every lead that we have. We are attempting to zero in on the problem and how it happens, and I think that's exactly what these witnesses were able to explain today.

Mr. Ballen.

Mr. BALLEN. Mr. Norman, on that chart, the companies represented there are among the largest purchasers of crude oil in the State of Oklahoma, is that why they were picked?

Mr. NORMAN. That's correct, Mr. Ballen.

Mr. BALLEN. Now, the Chairman also asked about how a company can permit a shortage and referred to Sun. Is it not true, compared to the total volume of oil that Sun was handling, which was absolutely enormous, the amount of shortage is negligible in terms of their numbers?

Mr. NORMAN. That's a good point, and that's true. There is some loss of fluid in the handling of this. That is to be expected.

Mr. BALLEN. And in fact, were the variances of the other four companies, in terms of their total numbers, infinitesimally small?

Mr. NORMAN. Absolutely.

Senator DECONCINI. The total number then for some of these companies is proprietary which we are not going to release but the committee has those figures, is that correct?

Mr. NORMAN. That's correct. That's very sensitive.

Senator DECONCINI. It's how you arrive at the judgment that it is minor in numbers, is that correct?

Mr. NORMAN. That's how I was able to quantify that, yes.

Senator DECONCINI. As negligible. Thank you.

Mr. Ballen, go ahead.

Mr. BALLEN. Nothing further, Mr. Chairman.

Senator DECONCINI. Mr. Sollers, anything further?

Mr. SOLLERS. No thank you, Mr. Chairman.

Senator DECONCINI. Thank you, gentlemen.

Next up will be Chris Tucker, Independent oil and gas expert from Houston, Texas. Mr. Tucker, we welcome you here.

[Witness sworn.]

Senator DECONCINI. Mr. Ballen.

Mr. BALLEN. Thank you very much, Mr. Chairman.

## STATEMENT OF CHRISTOPHER MICHAEL TUCKER, OWNER, OIL MOVEMENT CONSULTANTS & TUCKER INSPECTIONS, INC.

Mr. BALLEN. Mr. Tucker, could you please give your full name for the record?

Mr. TUCKER. Christopher Michael Tucker.

Mr. BALLEN. And what is your business, sir?

Mr. TUCKER. I own a business which specializes in petroleum measurements and petroleum products.

Mr. BALLEN. What is your business?

Mr. TUCKER. The name of my business is Oil Movement Consultants, and Tucker Inspections, Inc.

Mr. BALLEN. And what is the nature of your business, sir?

Mr. TUCKER. Oil Movement Consultants is a petroleum consulting firm, specializing in losses and measurement. Tucker Inspections is a U.S. Customs approved public gauger, which means a third party gauger in the case of a ship coming in with crude oil, we actually do the measuring, the quantity and the quality.

Mr. BALLEN. Sir, are you the owner of this business?

Mr. TUCKER. I'm a partner in it, and I was founder.

Mr. BALLEN. And are you the chief executive officer?

Mr. TUCKER. Yes.

Mr. BALLEN. How long have you been in business?

Mr. TUCKER. Four years.

Mr. BALLEN. How many employees do you have?

Mr. TUCKER. Fourteen.

Mr. BALLEN. Now, you stated that the nature of the business was public gauging and loss control involving crude oil, would that be correct?

Mr. TUCKER. Petroleum and petroleum products.

Mr. BALLEN. And those include crude oil?

Mr. TUCKER. Yes, it does.

Mr. BALLEN. Are you a certified gauger approved by the United States Government?

Mr. TUCKER. We have met the requirements issued by the U.S. Customs for imports and exports.

Mr. BALLEN. And have you received training in the gauging and measurement of oil?

Mr. TUCKER. Yes, I have.

Mr. BALLEN. And, sir, who typically are your customers?

Mr. TUCKER. We have several major oil companies that are our customers. There are also some smaller, independent trading companies, and some small, independent producers that are customers.

Mr. BALLEN. And, sir, what business do you perform for your customers?

Mr. TUCKER. It can vary from the gauging, as in the public gauging that we've talked about, to setting up loss control programs, training their people, researching losses and doing back gauging operations.

Mr. BALLEN. Have you, Mr. Tucker, personally trained major oil companies in loss control and the gauging of crude oil?

Mr. TUCKER. Yes, I have.

Mr. BALLEN. Now, sir, during the past year have you been hired to perform what is called back gauging operations on Koch Oil Company?

Mr. TUCKER. Yes, I have.

Mr. BALLEN. What is meant by the term back gauging?

Mr. TUCKER. Back gauging is a parallel measurement operation. What you're checking is the accuracy of the purchaser's gauger to ensure that he's done the job properly, and that the producer is not receiving or incurring losses.

Mr. BALLEN. And, sir, who hired you to perform this back gauging?

Mr. TUCKER. I was hired by the attorneys for Bill Koch.

Mr. BALLEN. Who is Bill Koch?

Mr. TUCKER. The brother of Charles Koch, who is the head of Koch Industries.

Mr. BALLEN. And in what connection were you hired to do this?

Mr. TUCKER. As litigation support in ongoing litigation.

Mr. BALLEN. Sir, how many back gauging operations did you perform pursuant to being hired this way?

Mr. TUCKER. I performed three back gauging operations against Koch Industries in the last year.

Mr. BALLEN. What percent of your total business is accounted for by the hiring of Bill Koch to perform these back gaugings?

Mr. TUCKER. I would estimate about 10 to 15 percent.

Mr. BALLEN. Now, Mr. Tucker, you've been in business four years, is that correct?

Mr. TUCKER. Yes, sir.

Mr. BALLEN. Do you have prior experience in the oil industry?

Mr. TUCKER. Yes, sir.

Mr. BALLEN. Before you opened your own business?

Mr. TUCKER. Yes, sir.

Mr. BALLEN. Now, based on your experience and expertise, could you explain to the members of the committee, what is the system in the United States used to gather crude oil?

Mr. TUCKER. There are two systems. One is a—say in a case of a Mobil, or an Exxon, or a Sun, where they own the oil well, they own the transport trucks, they own the refinery, and also the gas station. So the movement from the oil well all the way to the gas station, the processing, the transporting, everything, is performed intercompany. The more common system is the—say an independent producer——

Mr. BALLEN. The first one would be a vertically integrated producer——

Mr. TUCKER. Yes.

Mr. BALLEN [continuing]. And marketer of the oil?

Mr. TUCKER. Exactly.

The other system is an independent producer that sells his oil on site to a purchaser, who actually comes out to the site, measures the oil, tests the quality, and then transports it.

Mr. BALLEN. Which is more common in the United States, the vertically integrated production, marketing and sales, or the subsequent transactions, producer and then purchaser?

Mr. TUCKER. The second one.

Mr. BALLEN. Now, sir, when crude oil is sold, does it need to be measured?

Mr. TUCKER. Yes.

Mr. BALLEN. Why?

Mr. TUCKER. You're measuring the quantity of oil that people are being paid. In other words, the producer is being paid for the amount of oil, and royalties are being paid off that amount.

Mr. BALLEN. And why does oil need to be measured at all? There's quality and quantity, right? What are the two aspects of that?

Mr. TUCKER. Quantity is, of course, the measurements, so you take into account the amount of oil that's been moved, with the corrections allowing for temperature, and sediment and water, and you do the testing which is running the sediment and water and running an API gravity, which can effect the price of the crude oil.

Mr. BALLEN. So the quantity and quality affect the price and the amount of oil you're getting?

Mr. TUCKER. Exactly.

Mr. BALLEN. Now, you heard the testimony this morning that API standards govern the measurement of this oil?

Mr. TUCKER. Yes.

Mr. BALLEN. Those would be standards promulgated by the American Petroleum Institute?

Mr. TUCKER. Yes.

Mr. BALLEN. Now, sir, do these standards apply to Indian and Federal land?

Mr. TUCKER. Yes, they do.

Mr. BALLEN. Now, in your experience, if you measure the oil correctly, following proper standards, are the measurements generally accurate?

Mr. TUCKER. Generally, yes, they are.

Mr. BALLEN. Are they always accurate?

Mr. TUCKER. You can never get anything precisely, any measurement in any scientific test, or any measuring of any sort. But what you try to achieve is an amount of accuracy so that you won't have a significant difference.

Mr. BALLEN. Now, sir, we've heard a lot, and I'd like your definition of the terms over, short and under, so that we are clear on what they mean.

Mr. TUCKER. The term over means that the company is paid for less oil than it has, or in other words that they paid for 100 barrels, they actually received 102. The term short means that they've paid for more oil than they received. Another example is 100 barrels that they paid for, but they only received 98.

Mr. BALLEN. Under would mean the same thing as short?

Mr. TUCKER. Exactly.

Mr. BALLEN. Now, sir, you're an expert in oil measurement and loss control. In fact, it's your business to prevent shortages, such as the Chairman was questioning about earlier. That is your business to prevent those shortages?

Mr. TUCKER. Yes, sir.

Mr. BALLEN. Now, what in your experience with the oil companies that have hired you, and that you have dealt with in the course of your business, is with the over and short numbers that they have?

Mr. TUCKER. The oil companies, most oil companies, try to achieve the highest degree of accuracy possible. Sometimes you're over, sometimes you're short. On the average, though, it should be very—it shouldn't be significant, and should average out to zero.

Mr. BALLEN. What in your experience does a company do if it has a large overage?

Mr. TUCKER. Well, the company should research it and find out why they are incurring this overage. If they can attribute it to one action, say that they load it at a facility and something happened, a mechanical breakdown or something, we have customers, reputable companies that seek each other out if one is over or short, and actually give credit back. This is part of their business relationship. And as I said, at the year's end they try to achieve an average of zero for the overage and short.

Mr. BALLEN. Sir, have you had personal firsthand experience where a purchaser has subsequently credited the seller of the oil when the purchaser inadvertently received a larger overage?

Mr. TUCKER. Yes.

Mr. BALLEN. And then do these credits usually result in year-end balances typically close to zero, as we've seen with the case of the oil companies?

Mr. TUCKER. Percentage wise they usually end up close to zero.

Mr. BALLEN. Could you please put the chart up again?

[Chart displayed.]

Mr. BALLEN. Sir, in your experience, would there be any reason for a company to have millions of dollars in overages year after year?

Mr. TUCKER. There should be no reason. If someone, a company is incurring that type of overages, they should be doing research, analysis of their facilities, or their gauging techniques, and their auditing system to find out why.

Mr. BALLEN. How about giving credit back to the sellers of the oil?

Mr. TUCKER. When they can attribute it back to a specific producer, or seller, yes.

Mr. BALLEN. Now, sir, I'd like you to look at that chart. As the testimony indicated earlier, the information obtained from that chart, was obtained pursuant to Senate subpoena. The numbers in the millions of dollars for Koch Oil, is that typical of your experience of what industry generally runs in overages?

Mr. TUCKER. No, sir, not at all.

Mr. BALLEN. How about the other companies, Sun, Conoco, Kerr-McGee, and Phillips, all major oil producers and purchasers in Oklahoma, and across the Nation. Are their numbers, in terms of overages and shortages, typical or not typical based on your experience, Mr. Tucker?

Mr. TUCKER. They are typical.

Senator DECONCINI. Excuse me, Mr. Ballen. Let me just ask Mr. Tucker this question. You're saying for a company like Conoco to have 12,165 barrels, which they received but did not pay for to the tune of $204,000, in the context of Conoco's total volume, that is a very small amount?

Mr. TUCKER. It is a very small amount percentage wise.

Senator DECONCINI. That seems like a lot of money to me.

Mr. TUCKER. Initially it is a lot of money, when you take in the number of barrels handled, and apply the dollar amounts——

Senator DECONCINI. And likewise under the Kerr-McGee figure for 1988, 23,586 barrels, which they were short for the amount of $353,000. In the total volume of what Kerr-McGee handled, that is a small amount?

Mr. TUCKER. Percentage wise, I believe so.

Senator DECONCINI. Thank you.

Mr. BALLEN. Thank you, Mr. Chairman.

In any event, it's fairly obvious from the numbers that there's large differences between the numbers that Koch reflects from their own internal documents, and what the other companies reflect in their own internal documents. Would that be a fair statement?

Mr. TUCKER. Yes, sir.

Mr. BALLEN. Now, Mr. Tucker, based on your experience with both large major oil companies and independent oil companies, have you ever come across, personally, companies engaged in the deliberate mismeasurement of oil, since this is your business?

Mr. TUCKER. I have—the majors try to be accurate, the major companies. I have had contact with smaller, independent companies that do practice those methods of mismeasuring the oil. At one point I was contacted by one, and they wanted me to participate, and I strongly declined.

Mr. BALLEN. Now, sir, is the opportunity for any company to mismeasure and in effect steal from Indian and Federal lands available?

Mr. TUCKER. The opportunity is there and it's very easy to do such.

Mr. BALLEN. Why is that?

Mr. TUCKER. There are no checks and balances. There's no one supervising the measurements. A good example is taking a bag full of money to the bank, and you walk in and hand it to the teller and say there's approximately $20,000 in here, give me a count and call me at home. Well, the teller gives you a count an hour later, and says well, the count was $19,500. And you go, well, that's approximately $20,000, no problem. Well, the count could have been $20,100. You just don't know. There's no way. You're not doing anything to check yourself. It's a silly system.

Mr. BALLEN. And what does this do to the Indian owners of the oil?

Mr. TUCKER. They've been cheated out of money.

Mr. BALLEN. Mr. Tucker, you testified you did three back gauging operations involving Koch Oil during the last year. Sir, when was the first back gauging operation you performed on Koch Oil?

Mr. TUCKER. The first ones were performed in May of 1988.

Mr. BALLEN. And where was that, sir?

Mr. TUCKER. Eastern Colorado.

Mr. BALLEN. Who was the producer on the oil?

Mr. TUCKER. Mull Drilling Company.

Mr. BALLEN. How long did you engage in this back gauging operation?

Mr. TUCKER. Approximately one and a half to two weeks.

Mr. BALLEN. And, sir, how many actual back gauges did you perform this back gauging?

Mr. TUCKER. Nineteen.

Mr. BALLEN. Could you please describe to the members of the committee the process of back gauging oil? And the process you used in Eastern Colorado in May of 1988?

Mr. TUCKER. Typically, these lease sites are remote. What we do is we do a parallel measurement program. In other words we check the accuracy of the purchaser's gauger, conduct surveillance. Usually the local producer, the field people, don't know we're there. So it becomes very difficult to get on and off the lease sites, and do the measurements, and check the quality of the oil.

Mr. BALLEN. Let me see if I understand the process. You go to a lease site and you set yourself up in hiding somewhere in the area?

Mr. TUCKER. Usually, or somewhere off the lease site where we can have view of it.

Mr. BALLEN. All right.

And then after the gauger from the purchaser, let's say Koch Oil, goes in and measures the oil, you go in behind and remeasure the oil to test it, is that correct?

Mr. TUCKER. We measure the oil either before or after him, depending on the circumstance. But we take, basically, similar gauges on identical circumstances.

Mr. BALLEN. I understand.

And you did this over a period of time to get a representative sample?

Mr. TUCKER. Yes, I did.

Mr. BALLEN. And you checked your numbers against the run ticket numbers that were left by the purchaser's representatives?

Mr. TUCKER. Yes, sir.

Mr. BALLEN. Sir, in that first back gauging, what were the results of your back gauging operation?

Mr. TUCKER. The results of the first one showed that Koch Industries was incurring, or was purchasing eight-tenths of 1 percent less than they showed.

Mr. BALLEN. In other words, they were over eight-tenths of 1 percent?

Mr. TUCKER. Exactly.

Mr. BALLEN. They were receiving eight-tenths of 1 percent more oil than they were paying for, would that be a fair way of saying it?

Mr. TUCKER. Yes, sir; that's a very fair way to say it.

Mr. BALLEN. Sir, I noticed that you were reading from a report that you have before you. I believe I've seen those reports. You have three rather detailed reports with all the statistical data, that backs up your back gauging operations.

I would ask the Chairman if those could be entered into the record?

Senator DECONCINI. Without objection, they will appear in the record.

[Reports of Mr. Tucker appear in appendix:]

Mr. BALLEN. Thank you, Mr. Chairman.

Now, you say the Koch gauges were eight-tenths of 1 percent over in Koch's favor. How were the Koch gaugers actually mismeasuring the oil in Koch's favor?

Mr. TUCKER. They were——

Mr. BALLEN. What were they doing?

Mr. TUCKER. They were mismeasuring the gauges, Mr. Merritt talked about earlier, on the top gauge. They were bumping it. In other words stating it inaccurately. Then on the bottom gauge, or the closing gauge, they would do the same. They would adjust the temperature into their favor. They would adjust the gravity to their favor, and they would adjust the sediment and water, S&W to their favor.

Mr. BALLEN. Now, when you say they would adjust these items to their favor, in other words you're saying they would falsely state what the items were?

Mr. TUCKER. Yes, sir.

Mr. BALLEN. They didn't take an accurate measurement of the oil that you subsequently took, is that correct?

Mr. TUCKER. They did not record an accurate measurement.

Mr. BALLEN. Sir, where was your next back gauging operation regarding Koch Oil Company?

Mr. TUCKER. It was in Northeastern Utah on the Northern Ute Indian Reservation.

Mr. BALLEN. And these leases were on Indian land?

Mr. TUCKER. Yes, they were.

Mr. BALLEN. And who was producer there?

Mr. TUCKER. Linmar Petroleum.

Mr. BALLEN. And who was the purchaser of the Indian oil?

Mr. TUCKER. In this instance, Koch Industries.

Mr. BALLEN. And how long did you engage in this particular back gauging operation?

Mr. TUCKER. Approximately one and a half months.

Mr. BALLEN. And did you conduct covert, hidden surveillance again?

Mr. TUCKER. Yes, I did.

Mr. BALLEN. And again did you go in and parallel back gauge to remeasure the oil accurately after the Koch gaugers gauged?

Mr. TUCKER. Yes, I did.

Mr. BALLEN. And how many times did you actually go in and remeasure the oil after Koch's gaugers had purportedly measured it?

Mr. TUCKER. Due to the low production and the circumstances, we had six back gauges.

Mr. BALLEN. Now, sir, what were the results of your back gauging of Koch's purchases from the Northern Ute Indians?

Mr. TUCKER. We found that Koch Industries was shorting the producer. In other words, they were paying for less oil than they were taking by 1 percent.

Mr. BALLEN. And again, another way—it depends which side of the equation you look at. If you look at it from the producer's side, they were shorting the producer, and the Indians money?

Mr. TUCKER. They were cheating the Indians and the producer.

Mr. BALLEN. And if you look at it from the purchaser's side, they were incurring what we are now calling over?

Mr. TUCKER. Yes, sir.

Mr. BALLEN. And that was 1 percent?

Mr. TUCKER. Yes, sir.

Mr. BALLEN. Now, sir in the course of your undercover surveillance, did you actually film Koch gaugers mismeasuring the oil they purchased from Indian land?

Mr. TUCKER. Yes, I did.

Mr. BALLEN. And do you have those video tapes available to show the committee?

Mr. TUCKER. Yes, I do.

Mr. BALLEN. I would like to ask you at this time to please do so.

Mr. TUCKER. What you'll first be looking at is a lease in the Northern Ute Indian Reservation in Utah. The gentleman at the top is the one you want keep your attention on. He's the producer's pumper. And this is an example why it's so easy for the purchaser to steal the oil from the producer and from the Indians.

[Showing video.]

Mr. TUCKER. Right now he's walking up to the gauge hatch to gauge the level of the tank before calling the purchaser for him to pick it up. Note the time on the bottom righthand corner that he starts gauging.

Now he's unwinding the tape, lowering it into the tank, feels for the bottom gently to ensure that the gauge bob doesn't lean. He pulls up the tape, reads the gauge, winds up the tape and he's through.

That's the extent of the producer protecting the Indian's or the royalty owners' interest.

Can you stop the tape, please?

Senator DECONCINI. Yes, stop the tape.

Based on what Mr. Merritt testified—were you here?

Mr. TUCKER. Yes, sir.

Senator DECONCINI. Going through the process of what you should do, he did only one of five or maybe six different process, is that correct?

Mr. TUCKER. That's correct.

Senator DECONCINI. Now, do you know that he didn't come back and do the other ones?

Mr. TUCKER. Yes, sir. We do know that. We observed the site. Actually right after that, we monitored the site until the purchaser's gauger got there, and then we gauged it in parallel. Actually we gauged just after this gentleman.

Senator DECONCINI. Thank you.

Mr. TUCKER. And now the things that they didn't do. He took an oil level gauge one time. API guidelines tell you to take it until you receive two identical gauges, to ensure that you're accurate. He did not take a temperature, which is necessary for calculating the volumes. He did not check the water level on the bottom of the tank, which is necessary. He did not take a sample for running a gravity or an S&W, sediment and water, which is also necessary for calculating the volumes.

Again, he walked up to the tank, gauged the tank and walked away.

Senator DECONCINI. Do you have any idea, or maybe Mr. Ballen you're going to pursue this—while it's on my mind, do you have any idea what he filled out on the forms?

Mr. TUCKER. I'm not sure, sir. I expect a production report.

Senator DECONCINI. The forms would have all the records of what the gauger should have checked, right?

Mr. TUCKER. Well, this is the producer's pumper. He actually operates the lease.

Senator DECONCINI. This is the producer pumper here?

Mr. TUCKER. Yes, sir.

Senator DECONCINI. I see.

Well, he would fill it all out, right?

Mr. TUCKER. Well, he should—there should be some company document, should be. Normally there are not. That is where they should be doing these things to protect themselves and protect the royalty owners. It's silly for them to do this. I mean, they spend millions of dollars exploring, drilling for oil, completing the wells, and then when it comes time for them to recap their capital, you know, recoup their capital, this is their paycheck. They just walk away and are not responsible about it at all.

Senator DECONCINI. Proceed, please, with the tape, Mr. Tucker.

Mr. BALLEN. This is the same lease on the Northern Ute Indian Reservation, sir?

[Showing video.]

Mr. TUCKER. Yes, sir.

October 7, 1988, and this is the purchaser's gauger who will be driving up in just a second.

Mr. BALLEN. And this is the Koch gauger?

Mr. TUCKER. Yes, this is the Koch gauger in this case. Now he's going to take a bottom gauge in this case. He's walked around to the back of his truck where there's a tool box, and that's where his grind-out machine and all of his equipment is kept. And notice as he's walking to the tank what he has in his hands. He has a rag

and a gauge line only. He doesn't have a thief. He doesn't have a thermometer. He doesn't have to take a sample at this point, since the load already's been shipped. But a thief and thermometer is necessary to calculate the volume to show the amount of oil that's been loaded out.

As he walks through the gauge hatch, notice the time on the bottom righthand corner.

Mr. BALLEN. What is that time, Mr. Tucker?

Mr. TUCKER. Let's call it 5106 when he begins gauging.

He's lowering the gauge line to the bottom of the tank. He should lower it gently to feel for the bottom as he's doing, to ensure that he doesn't let the bob lean and get an inaccurate measurement. He's reeling it back up. He reads the measurement on the tape, and cleans his gauge line. And this time, watch carefully about how he lowers his tape again. This time he doesn't take the care that he did initially. He lets it spin freely, hitting the bottom, allowing it to lean to one side or the other, giving an inaccurate gauge. He rewinds it, reads the measurement on the gauge line.

Mr. BALLEN. You were hidden behind some trees?

Mr. TUCKER. Yes, we were out in some trees behind, and he wasn't aware of our presence.

He winds up—he's through, he winds up his tape, closes the hatch, and walks away, spending approximately 1 minute and fifteen seconds measuring a tank of oil.

Mr. BALLEN. Mr. Merritt testified it takes 15 to 20 minutes. In your experience, is that about right?

Mr. TUCKER. In some cases for the opening, yes. For the closing it would take more time than he took right there. The things that he didn't do, he didn't take a temperature, he didn't take a thief up to check for the water on the bottom of the tank. And he took one gauge very carefully, and he took another gauge very inaccurately.

Mr. BALLEN. And did you subsequently go in and remeasure what this fellow did on the Northern Ute Indian Reservation?

Mr. TUCKER. Yes, sir, we did.

Mr. BALLEN. And did you find that he was taking oil in Koch's favor?

Mr. TUCKER. I found that on this case, if I'm not mistaken, with the opening gauge and the closing gauge being combined for that load out it was 2 percent.

Mr. BALLEN. It was 2 percent.

Thank you, Mr. Tucker.

Mr. TUCKER. Can we have the next one?

[Showing video.]

Mr. TUCKER. This is on the same lease, same tanks, different gauger. He's doing a top gauge, or an open gauge. Right there he's lowering his thief to get the water level sample. He's now raising it up. Now he checks the thief to find out how much water is in there allowing for the bottom water gauge, for the water gauge.

Mr. BALLEN. This is a different instance of surveillance you conducted on the Northern Ute Indian Reservation?

Mr. TUCKER. Right. That's a different day. I think it's October 11th.

Now, he drains the thief, lowers it back into the tank to get a sample for running the gravity and S&W. Now what he'll do is

he'll hang the thief on the side of the gauge hatch. There's a little lip that's made for that. He'll take a hydrometer out now. Note the time that he puts the hydrometer in right now, 3732. Now he's gauging the tank. He should lower it gently to ensure that he doesn't hit the bottom too hard. He does that. He rewinds the tape, reads the measurement, wipes his tape off, and does it again. He has his second measurement. Now, he rewinds his tape, puts it up.

Now he's going to read the hydrometer which he dropped into the thief which has the oil in it. And when he pulls it out, he has left it there less than one minute. The temperature outside was in the high 30's to low 50's, it ranged from early in the morning to in the afternoon. The temperature of the oil in the tank varied between 140 to 150 degrees, typically, because of the consistency and the nature of the oil. There's no way that that could have been—the thermometer in the hydrometer could have reached the temperature of the oil. It's inaccurate. It's not following API guidelines. Now he's draining the thief. He doesn't not retain a sample for running the sediment and water. As we observed him later, he did not run a sediment and water on site, nor do we see him pour a sample.

Now he's pulling out the thermometer, reading the temperature, closes the hatch, and he's done. Again, he did not allow the thermometer in the hydrometer enough time to reach the temperature of the oil. And that's just not following API guidelines or standards.

Mr. BALLEN. Now, sir, did you also back gauge at this particular time on the Northern Ute Indian Reservation?

Mr. TUCKER. Yes, we did.

Mr. BALLEN. And again, what did you find with the purchaser in this instance.

Mr. TUCKER. A difference of almost four-tenths of 1 percent.

Mr. BALLEN. On this particular——

Mr. TUCKER. Yes.

Mr. BALLEN. And overall it was about 1 percent.

Mr. TUCKER. The overall average for all the leases that we gauged was 1 percent.

Mr. BALLEN. Now, in addition to crude oil measuring on the Northern Ute Indian Reservation, did you also check Koch's purchases of natural gas?

Mr. TUCKER. Yes, we did. We contracted a company called Measurement Services to do that.

Mr. BALLEN. And what were the results of the measurement of natural gas?

Mr. TUCKER. The results were inconclusive, due to the charts that weren't available to us because they're part of Koch's property and they just weren't available to us at that time. The thing that we did find was that of the 202 items checks, there were 160 inaccuracies, or 79 percent of the gas flow meters were inaccurate.

Mr. BALLEN. But you had no way of determining whether or not those inaccuracies were being perpetrated in Koch's favor or to Koch's disadvantage in that particular lease?

Mr. TUCKER. No, sir. I can't tell you that at this moment.

Mr. BALLEN. Now, sir, did the company you contracted with do the gas measurements on the Northern Ute Indian Reservation,

also perform a back gauging on crude oil in North Dakota in September of 1988?

Mr. TUCKER. Yes, they did.

Mr. BALLEN. And what was their results on back gauging Koch in North Dakota?

Mr. TUCKER. The results they showed in North Dakota, and it will be on the report, shows a total overage of 7.76 percent.

Mr. BALLEN. So, 7.76 percent of the oil?

Mr. TUCKER. Yes.

Mr. BALLEN. Now, Mr. Tucker, when was the last back gauging operation you personally performed on Koch Oil?

Mr. TUCKER. It was done in February of this year, 1989.

Mr. BALLEN. Where was that?

Mr. TUCKER. Bakersfield, California.

Mr. BALLEN. Who was the producer?

Mr. TUCKER. Anacora-Verde.

Mr. BALLEN. Could you say the name of the producer again?

Mr. TUCKER. Anacora-Verde.

Mr. BALLEN. And how long did you engage in this back gauging operation?

Mr. TUCKER. Approximately two and a half weeks.

Mr. BALLEN. And how many back gauges actually were performed?

Mr. TUCKER. We had 10 gauges.

Mr. BALLEN. What were the results of this back gauging operation, sir?

Mr. TUCKER. We showed in this case that Koch Industries, who was the purchaser, was showing an overage of 2.43 percent of the volume of the crude oil.

Mr. BALLEN. Now, did you relay your findings in this back gauging to the producer of the oil, Anacora-Verde Corporation?

Mr. TUCKER. Yes, we did.

Mr. BALLEN. And what did the producer subsequently do?

Mr. TUCKER. Subsequently he has severed his connections with Koch as far as a purchaser, and has since been selling the oil to Enron Corporation.

Mr. BALLEN. Enron Corporation?

Mr. TUCKER. Yes.

Mr. BALLEN. And do you know what his experience has been with Enron Corporation since he is now selling the oil to them?

Mr. TUCKER. We found that Koch was understating the gravities, which in this case has a great deal of significance, since there's a penalty curve, approximately 25 percent per each degree of gravity. They were overstating the S&W's. They were gauging the oil in their favor, and they were temperaturing the oil in their favor.

Mr. BALLEN. And what happened with Enron?

Mr. TUCKER. Since Enron has began purchasing his crude oil, he has found that his gravities have gone up, his S&W's have gone down, the oil measurements seem to be accurate, and that the temperatures seem to be accurate. In other words, they correspond to the results we gave him.

Mr. BALLEN. In other words, when you were back gauging the oil on the Anacora-Verde properties, and then subsequently when

Enron is now doing it, yours and Enron's figures match, whereas Koch's figures were 2.43 percent in their favor?

Mr. TUCKER. Yes.

Mr. BALLEN. Now, Mr. Tucker, you have a statement, a signed statement dated May 5, 1989, from the producer, Anacora-Verde Corporation?

Mr. TUCKER. I have it from the representative Albert Mooney.

Mr. BALLEN. And Mr. Chairman, I'd like to have the full statement entered into the record. Mr. Tucker, if you could just briefly summarize it.

[Prepared statement of Mr. Mooney appears in appendix:]

Mr. TUCKER. I'll start off, "I, Albert Mooney, have resided in Bakersfield, California for 35 years. I have worked for Anacora-Verde Corporation since 1975.

"The crude oil production from Anacora-Verde leases was sold to Koch Oil Company until March of 1989. I felt that Koch was understating the gravities, overstating the sediments and waters"---

Mr. BALLEN. Mr. Tucker, why don't you just summarize what he said. He was concerned about Koch's gauging practices, and then you subsequently performed a back gauging?

Mr. TUCKER. Yes, I did.

Arrangements were made with my company in February, 1989, to do a back gauging operation, and since we found the results that I reported earlier, they quit selling to Koch, they severed their connections with Koch Industries and started selling to Enron Corporation. And since then has seen the gauges, the gravities and the sediments and waters, and everything else correspond to the results that I reported.

Mr. BALLEN. Mr. Tucker, thank you.

Mr. Chairman, I have no further questions of Mr. Tucker.

Senator DECONCINI. Senator McCain, do you have any questions?

Senator MCCAIN. I have no questions.

Senator DECONCINI. Mr. Tucker, when you're employed by a company, you're employed to see that their gaugers are guaging correctly, or are you employed to see that the people they're buying from are doing it correctly, or both?

Mr. TUCKER. Both.

Senator DECONCINI. You could be paid by the producer, or you could be paid by the processor, or whatever they call it.

Mr. TUCKER. Yes, sir.

Senator DECONCINI. Is that correct?

Mr. TUCKER. The purchaser. In some cases when we do the independent inspection, the public gauging, is usually when company A is selling to company B, and we're the disinterested third party.

Senator DECONCINI. Now, have you ever been employed by the BLM?

Mr. TUCKER. No, sir.

Senator DECONCINI. Or any Governmental agency to do any monitoring whatsoever?

Mr. TUCKER. No, sir.

Senator DECONCINI. Do you know in your profession, does the Government employ outside contractors to do that kind of measuring?

Mr. TUCKER. I don't know, sir.

Senator DECONCINI. You don't know of any examples?

Mr. TUCKER. No, sir, I don't.

Senator DECONCINI. Thank you. I have no further questions.

Mr. BALLEN. Mr. Tucker, let me just ask you one question with regard to what the Chairman alluded to. You have set up loss control programs for private industry, have you not?

Mr. TUCKER. Yes, I have.

Mr. BALLEN. And in setting up those loss control programs, have you designed programs whereby producers and royalty owners, like the Indians or the Federal Government could protect themselves without actually having to go and witness every single gauging?

Mr. TUCKER. We've developed a program that's very cost efficient. One example is I've done for Mull Drilling, and they expect to recoup their investment of their money for their equipment and my time within two months. And that's on .81 percent.

It's very easy to do, provided the attention is given to it, and the importance is stressed to the people. In giving seminars—I've given gauging schools and seminars to people — teaching the people out in the oil patch how to protect themselves from the purchaser, I've never seen a group of people so receptive and so attentive, because most of them have no formal training for gauging, and a lot of the enforcement agencies, no one has either. And I've actually seen people keep me after hours, ask me questions, and calling me at home if they run into a situation.

Mr. BALLEN. Does the Federal Government have any such program to protect Indian and Federal lands?

Mr. TUCKER. None that I'm aware of.

Senator DECONCINI. Thank you, Mr. Tucker.

Our last witness this morning will be Special Agent, Richard James Elroy.

[Witness sworn.]

Senator DECONCINI. We're going to begin with your testimony this morning and go until about 10 after the hour, and then we will recess for lunch.

Mr. Ballen.

Mr. BALLEN. Thank you, Mr. Chairman.

## STATEMENT OF RICHARD ELROY, SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE

Mr. BALLEN. Mr. Elroy, what is your profession?

Mr. ELROY. I'm a special agent employed by the United States Department of Justice, Federal Bureau of Investigation.

Mr. BALLEN. How long have you been a special agent with the FBI?

Mr. ELROY. Eighteen years.

Mr. BALLEN. Where are you based, sir?

Mr. ELROY. Oklahoma City.

Mr. BALLEN. What are the kind of cases, Agent Elroy, that you've handled in your eighteen years experience with the FBI?

Mr. ELROY. A wide variety of cases, but I've spent a considerable amount of time investigating matters that relate to American Indians and public corruption.

Mr. BALLEN. Sir, have you been detailed to the Special Committee on Investigations for the past 6 months or so?

Mr. ELROY. More like eight months.

Mr. BALLEN. All right.

Mr. ELROY. They keep extending me. Mr. Ballen keeps extending me.

Mr. BALLEN. It was supposed to be 6 months, correct?

Mr. ELROY. I refuse to answer that. [Laughter.]

Mr. BALLEN. Well, maybe I ought to move on to another topic. You've done other work for the committee involving Indian funds, corruption in tribal governments and the Federal Government, and other matters, have you not?

Mr. ELROY. Yes, sir.

Mr. BALLEN. Have you recently embarked upon another investigation for this committee?

Mr. ELROY. Yes.

Mr. BALLEN. And what has been that investigation?

Mr. ELROY. That was an investigation into oil theft on Indian lands.

Mr. BALLEN. Now, sir, as part of that investigation, did you conduct a survey of the major oil and gas purchasers on Indian land in the State of Oklahoma, where the majority of Indian allottees are based?

Mr. ELROY. Yes.

Mr. BALLEN. And what, if anything, did you learn about who were the major purchasers of Indian Oil?

Mr. ELROY. Koch is one of the biggest, if not the largest.

Mr. BALLEN. And why, sir, did the committee focus on Oklahoma in it's oil theft investigation?

Mr. ELROY. Oklahoma is somewhat unique in that it has a very high percent of Indian allottees. That is, individual Indian owners. The sites are remote. They would have absolutely no way to protect themselves, whatsoever. This is in contrast to the tribe, who might have the ability to hire someone to protect their interests.

Mr. BALLEN. The Federal Government is supposed to protect the allottee interests, aren't they?

Mr. ELROY. I would think so.

Mr. BALLEN. Now, sir, what was your methodology used in selecting leases to analyze in the State of Oklahoma?

Mr. ELROY. We just selected Indian leases at random, beginning first up in the Osage area where we knew that all the leases in that area were Native American. And then we set up a covert, or hidden surveillance, on fairly high producing leases, so we wouldn't have to sit there for days and days waiting for the lease to be gauged.

Mr. BALLEN. Now, Agent Elroy, was the surveillance set up not only in Osage County in Oklahoma, but on Indian allottee leases throughout the State of Oklahoma?

Mr. ELROY. Yes. We set up surveillances in Caddo County, and in Potawatomi County.

Mr. BALLEN. And how many Indian leases were actually surveilled?

Mr. ELROY. We picked eight leases at random.

Mr. BALLEN. And were these all crude oil producing leases?

Mr. ELROY. Yes.

Mr. BALLEN. They were on Indian land?

Mr. ELROY. Yes.

Mr. BALLEN. And again, generally, where were they located?

Mr. ELROY. Down in the Binger area, which would be Caddo County, up towards the Kansas line in Nowata, which is Osage County, and in the center part of the State near Shawnee, Oklahoma, which would be Potawatomi County.

Mr. BALLEN. Now, sir, what techniques of investigation were employed; you testified surveillance. Could you describe the kind of surveillance the committee conducted on these leases, the committee investigators conducted?

Mr. ELROY. Generally, we used a 600 millimeter lens camera, and developed some area in the tree line, or sometimes in a ditch. In one case they used livestock for cover. Some of Western Oklahoma is kind of flat.

Mr. BALLEN. Should I ask what kind of livestock you used for cover?

Mr. ELROY. These were herefords. [Laughter.]

And the cedar bushes there have very sharp protrusions in them. There was one site that only had two cedar bushes, and one 600 millimeter lens protruding from one side.

Mr. BALLEN. And in addition to the surveillance, what was done on these leases?

Mr. ELROY. Then we would back gauge. We would observe the gauger gauge, and then we would come in behind him, as has been previously described. Back gauging could be either right in front of him, meaning we would know that he is about to gauge and we would check it that morning when we got on the site, or we'd go after him.

Mr. BALLEN. And you heard Mr. Tucker's testimony describing at quite some length what is a back gauging operation, how it's conducted, basically what you're doing is your remeasuring the purchaser's gaugers to see if they're measuring accurately, would that be a fair statement?

Mr. ELROY. That's a fair statement.

Mr. BALLEN. And you would come in and take the temperature, and take the impurities out, the sediment and water, and measure the gravity and use the tape measure, and then we've got the quantity. I think I've got everything, right?

Mr. ELROY. That's correct.

Mr. BALLEN. Agent Elroy, could you provide to the members of the committee with the results of the surveillance on the eight leases that was conducted by committee investigators?

Mr. ELROY. On six of the eight we found they were stealing oil. Two of the leases we found they were quite accurate.

Mr. BALLEN. And why do you say they were stealing oil? Would that be mismeasuring in their favor the over, or whatever you want to describe it, that we were discussing this morning in this committee room?

Mr. ELROY. Mismeasuring, I've heard that term. I don't know whether they were mismeasuring or not. I know they were falsely reporting the figures.

Mr. BALLEN. In the company's favor.

Mr. ELROY. Yes.

Mr. BALLEN. And that would be the same as taking more oil than you're paying for, which is reflected as over in the figures that are on the chart here?

Mr. ELROY. Yes.

Mr. BALLEN. Always over in the company's favor on those six leases?

Mr. ELROY. Yes, that's right.

Mr. BALLEN. There was oil stolen?

Mr. ELROY. They were stealing oil.

Mr. BALLEN. There's a lot of terms here today about over and short and mismeasuring, but what does it come down to, Agent Elroy, plain and simple?

Mr. ELROY. It's theft. The part that bothers me about mismeasurement, I can't see very well to the quarter of an inch when he sticks the gauge in the tank. But when we've just measured it and it says 14 feet, and he records 13 feet 6 inches, then he just stole 6 inches worth of oil. Now, I don't know what he measured, but I sure know what he reported, and I know how much oil was in that tank. So, I'm not in the oil business, but I prefer to call it fraudulent reporting of how much oil was there.

Mr. BALLEN. Now, sir, you said that on two of the leases the measurement was conducted accurately. Where were those leases and who was purchasing the oil on those leases?

Mr. ELROY. Those leases were Potawatomi County and the purchaser was Sun Oil. And the other purchaser was Vintage Oil.

Mr. BALLEN. And we conducted the same surveillance—who were the other six leases, sir, who was the purchaser?

Mr. ELROY. Koch Oil.

Mr. BALLEN. Did the committee investigators conduct the same surveillance and techniques of back gauging with regard to Sun Oil and Vintage Oil that the committee had conducted with respect to Koch Oil?

Mr. ELROY. Yes.

Mr. BALLEN. And the committee found that Sun Oil and Vintage were accurate in their measurements?

Mr. ELROY. Yes.

Mr. BALLEN. Now Sun Oil is one of the largest purchasers of Crude Oil in the State of Oklahoma, like Koch, is that not true?

Mr. ELROY. That's correct.

Mr. BALLEN. In fact, their figures are on the chart?

Mr. ELROY. Yes, sir.

Mr. BALLEN. Do their figures comport with our findings on the back gauging, Agent Elroy?

Mr. ELROY. Yes, it appears that their over and short is reasonable, which would correspond to what we're observing their gaugers do, which is accurately gauging.

Mr. BALLEN. Now, Agent Elroy, without going into exhaustive detail on all six surveillances where theft occurred, could you please give the Senators, this morning, several examples of the surveillances conducted and what they showed?

Mr. ELROY. Yes, on 21 March, in Osage County we observed a gauging by Koch Oil Company. We noticed that the gauger never used the thermometer. As Mr. Merritt surmised, he got the temper-

ature off the radio, or some other way, but he didn't get it off the thermometer, because he didn't use it.

He gauged—overall his gauging was approximately 1 percent in Koch's favor. He doubled the sediment and water figures.

Mr. BALLEN. Now, sir, who is the producer on this lease, do you know?

Mr. ELROY. CEJA, I believe.

Mr. BALLEN. And they're an oil company?

Mr. ELROY. Yes.

Mr. BALLEN. And this was located in Osage County, the Osage Indians?

Mr. ELROY. Yes.

And then again on 28 March the producer here was Phillips Oil Company. This would be in Caddo County in the Binger field.

Mr. BALLEN. What happened there? Who are the Indians there? Do you know what tribe?

Mr. ELROY. Caddo. There are also some Comanche, but this was Caddo, I believe.

Mr. BALLEN. And this was an allottee lease?

Mr. ELROY. Yes.

Mr. BALLEN. What happened on this lease, sir, as a result of the surveillance.

Mr. ELROY. We were a little mystified this time, because we were unable to photograph the gauger, because he was never there. We watched the pumper. The pumper——

Mr. BALLEN. The pumper would be from Phillips, the producer?

Mr. ELROY. Phillips Oil Company somehow acquired a supply of seals which would be in the possession of the Koch gauger. The pumper had some Koch seals, and I understand when the valves are turned on and off, they're again sealed with numbered seals so that they can't be tampered with. So the pumper arrived and he pumped the oil, but there didn't appear to be any measurements taken. We checked it to see—we came up with our figures, we gauged it. And we found out subsequently by checking the run ticket, which was completely fabricated, because there wasn't anybody there. They certified on that day figures that were false and indicated Koch was 19 degrees high in the temperature, and they reported two and three-quarters of an inch less of oil. They were a tenth high on their BS&W, and it amounted to about a 2.5 percent theft of oil in Koch's favor, or about a little over seven barrels of oil from this one lease, from this day. There were pumpings from those leases every other day.

Mr. BALLEN. Those tickets were being falsified?

Mr. ELROY. They were completely fabricated. There was nobody there. The man who signed it is swearing that he did perform this work and was present. He was never there. We watched—we thought maybe this was isolated. We watched it a number of times. He was never there.

Mr. BALLEN. Now, Agent Elroy, in the four other surveillances conducted who was the purchaser on those?

Mr. ELROY. Koch Oil.

Mr. BALLEN. And when were these surveillances conducted?

Mr. ELROY. In the same time frame, in about a two-week time frame.

Mr. BALLEN. And sir, again, you would stake out the leases, hiding?

Mr. ELROY. Yes.

Mr. BALLEN. Perform back gauging?

Mr. ELROY. Yes.

Mr. BALLEN. And what was your result again of these surveillances in the back gauging conducted?

Mr. ELROY. The same experience. There would be a reporting 10 degrees high on the temperature, and they would gauge in Koch's favor and be high in BS&W.

Mr. BALLEN. Agent Elroy, did the committee take photographs of all the surveillances conducted?

Mr. ELROY. Yes.

Mr. BALLEN. Do you have the photographs with you, the photograph album?

Mr. ELROY. Yes, right here. Except for the invisible man, we didn't get his photograph.

Mr. BALLEN. The one that never showed up?

Mr. ELROY. No, there's just a tank there, and there's no person.

Mr. BALLEN. Now, Mr. Chairman, I think this would be an appropriate point to break. Mr. Elroy has some further extensive testimony on interviews he conducted in reference to this and statements made by people, but I think we ought to take that up this afternoon.

Senator DECONCINI. Thank you, Mr. Ballen. Thank you, Mr. Elroy, we will continue the hearings at 2:00 p.m. this afternoon, and Mr. Elroy will be the witness at that time. Thank you.

[Whereupon, at 12:12 p.m., the special committee recessed, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION—2:05 P.M.

Senator DECONCINI. The Senate Special Committee on Investigations will come to order.

Does the Senator from Arizona have any opening statement?

Senator MCCAIN. No thank you, sir.

Senator DECONCINI. We will proceed then with Agent Elroy.

You may continue, Mr. Ballen.

Mr. BALLEN. Mr. Chairman, thank you very much.

Agent Elroy, before the lunch break you were testifying as to the eight surveillances that you and other committee investigators conducted on Koch leases and other oil company leases in the State of Oklahoma.

Mr. ELROY. That's correct.

Mr. BALLEN. Sir, just to bring us up to date, what were the results of those surveillances?

Mr. ELROY. Of the eight random surveillances we did of oil leases on Indian Country, there was theft of oil from six of the eight. Two of the leases were operated—one by Sun Oil Company and one by Vintage Oil Company. Both of these companies appeared to be gauging the oil accurately. The other six were operated by Koch Oil Company, and their gauger was falsifying the information on the run tickets, resulting in theft of oil.

Mr. BALLEN. Now, Agent Elroy, what has been your experience as an FBI agent in conducting surveillances?

Mr. ELROY. We become involved in surveillances from time to time on military installations or in drug-related situations. One, in particular, we ran at random on a military installation where we had about 25,000 civilians. The military stopped cars at random, and we were having incidents of theft of government property or drugs at a rate of somewhere around one in one hundred vehicles. If we had had a rate of six out of eight, we would have thought that was an alarming incidence of theft of government property.

Mr. BALLEN. And isn't there theft of government property here in Indian property, because the Indian and the Federal Government own this oil; isn't that correct?

Mr. ELROY. Yes.

Mr. BALLEN. Now, sir, what does that tell you? Let me just make sure I understand it. You had eight random surveillances, and on six of them you found theft; is that correct?

Mr. ELROY. Yes.

Mr. BALLEN. What does that tell you about the situation that the Indian owners of the oil are faced with, at least in Oklahoma?

Mr. ELROY. It tells me that the theft is widespread and pervasive, and these people are being horribly victimized—not only the Indians, but the producers of the oil are being victimized. Phillips Oil Company is suffering some big losses in the areas that we looked into.

Mr. BALLEN. Now, Agent Elroy, after conducting the eight surveillances and the back gaugings, what, if anything, did you do?

Mr. ELROY. We next proceeded to interview current employees of Koch Oil Company that were involved in the gaugings and, more specifically, the gaugings that we had observed.

Mr. BALLEN. And did you also interview other employees of Koch who were not specifically involved in these exact gaugings that you had surveilled?

Mr. ELROY. Yes.

Mr. BALLEN. Agent Elroy, do you tape record these interviews, generally?

Mr. ELROY. Some of them we did. Yes.

Mr. BALLEN. Did you interview specifically the gauger involved in the Binger Oil Field theft, that invisible gauger who never showed up?

Mr. ELROY. Yes.

Mr. BALLEN. How many tanks is that gauger responsible for gauging each month for Koch Oil?

Mr. ELROY. He said 260 to 300.

Mr. BALLEN. Did you have a witness with you when you interviewed this gauger?

Mr. ELROY. Yes.

Mr. BALLEN. What did the gauger tell you, if anything?

Mr. ELROY. We displayed to him the run tickets on the leases that we had observed on the dates he indicated that he had gauged. At first he told us that he had gauged those tanks and that they were accurate.

When we pointed out that we were at the location at the time that he said he gauged, and he wasn't—and we know he wasn't

there—then he admitted that he had fabricated all the information on the run ticket and completely falsified the run ticket.

We pointed out to him that, based upon our back gauging, that he had stolen over seven barrels of oil just on one gauging by bumping the temperature 19 degrees and by taking two and three quarter inches of oil.

He said that he would get some of the gauging information from the pumper. He gave the pumper some of Koch's seals so the pumper could reseal. And he would use a little black book that Koch furnished him that would give him the general information on each well as to what the gauging should read—what the temperature, the specific gravity, the grind-out should read. And he would take those figures and then inflate them to make absolutely sure that he was not under or coming up short.

Mr. BALLEN. And he would do that? And did he state whether or not his superiors in the company had given him any direction on this matter?

Mr. ELROY. He said there was continuous pressure not to be short—never be short. He said he was never short, and therefore he was never, ever questioned. His figures were never questioned.

Mr. BALLEN. Because, in fact, he was long.

Mr. ELROY. He was very long.

Mr. BALLEN. Now, Agent Elroy, did you subsequently proceed to interview the gaugers involved in Osage Oil thefts?

Mr. ELROY. Yes.

Mr. BALLEN. That you had conducted surveillance on?

Mr. ELROY. Yes.

Mr. BALLEN. Could you give the committee the results of those interviews?

Mr. ELROY. They, unlike the Binger situation, were actually present and did do some gauging; however, none of them had accurately filled out the run ticket. That is, they falsified all or a portion of the run ticket completely, meaning that they would record temperatures and they never took a temperature. One man said that he had not used the thermometer since Koch took over the company.

Now, these people were trained to gauge by a company called Big Heart Oil Company, and this company was purchased by Koch—I believe in the early part of 1987. These people then went to work for Koch from Big Heart.

The significance of that is that they tell us that when Big Heart operated the same area they stressed accuracy, and they were told that if they were over or short that they would be subject to termination.

Big Heart then hired investigators and sent them into the field and spot checked them just exactly the way we were and took aggressive action if they found they were not accurate.

Mr. BALLEN. What happened—go ahead.

Mr. ELROY. I asked them if, when they worked for Big Heart, they did the same sloppy procedure and falsified the information. They said no, they checked every single one because they never knew when they might be watched, and also the company put no pressure on them to be long.

Mr. BALLEN. And what did they state was the pressure they got now that Koch took Big Heart over?

Mr. ELROY. They said they'd have these continuous improvement meetings, whatever they did was not good enough, they were always screaming that they were short, so they couldn't——

Mr. BALLEN. When, in fact, they were not?

Mr. ELROY. They couldn't figure out how they could be. They had been falsifying these figures in favor of the company significantly, and they keep raising them and raising them because they keep being told all the time they're short.

Mr. BALLEN. Was there ever any discussion from company officials, according to these gaugers, about directing them to steal, precisely in those words?

Mr. ELROY. No. They said that Koch never came out and had a meeting and said "Steal all you can." But they indirectly put the pressure on them to do—at least with these employees that were trained by Big Heart, they were not trained to steal. So there had to be a reconditioning process, or apparently a reconditioning process by putting pressure on them to not be short.

Mr. BALLEN. Was there a term for the kind of activity they were engaging in?

Mr. ELROY. "Volume enhancement" was what they preferred to call it.

Mr. BALLEN. And what did that mean in terms of how much they were supposed to be over by?

Mr. ELROY. They just weren't supposed to be short. It looked to us, based upon what they were telling us, looking at their run tickets, that they were anywhere from 1 to 4 percent over.

Mr. BALLEN. Now, sir, did any of these employees tell you about meters that Big Heart had in place when they were running the operation?

Mr. ELROY. Yes.

Mr. BALLEN. What did they say?

Mr. ELROY. That Big Heart installed a number of meters to be able to monitor the oil at a number of different locations so they could quickly determine if they were short and who was responsible. They could also quickly determine if there was an oil leak and take action based upon this metering system.

When Koch took over, they went in and took the meters out so that it would not be possible to have exact, precise figures on any one location. Also, there was a computerized print out that indicated precisely how short or how over any one area was.

Mr. BALLEN. This was when, sir?

Mr. ELROY. This was under Big Heart. That was disseminated widely right down to the grass roots supervision. Apparently that practice stopped when Koch took over.

Mr. BALLEN. Now, Agent Elroy, as you previously testified, some of these interviews were surreptitiously tape recorded and you had a witness present at all times; isn't that correct?

Mr. ELROY. That's correct.

Mr. BALLEN. Now, apart from the gaugers specifically involved in these oil thefts that you had surveilled, did you interview other gaugers at Koch Oil?

Mr. ELROY. Yes.

Mr. BALLEN. And what, in substance, was said by those gougers?

Mr. ELROY. They were bumping the temperature about ten degrees, they were taking anywhere from an inch to four inches of oil, and that they were increasing the grind-out.

Mr. BALLEN. All resulting in "volume enhancement"?

Mr. ELROY. Right. Theft. Exactly.

Mr. BALLEN. Now, did you interview any current supervisors at Koch Oil Company?

Mr. ELROY. Yes, I did.

Mr. BALLEN. And could you report to the members of this committee what was said?

Mr. ELROY. A supervisor had been there for some time, and he——

Mr. BALLEN. This is one supervisor?

Mr. ELROY. Yes. He had been trained in what they call the "Koch Method" of gauging, which was to bump the bottom gauge and cut the top gauge and get anywhere from a half inch to three or four inches of oil, depending on whether anyone was watching or not. If somebody was watching, you'd get a half inch; otherwise, you'd get whatever you can get. Bump the temperature ten degrees and increase the grind-out so it is not less than .4 percent.

Mr. BALLEN. Now, sir, when you questioned this Koch supervisor, did he give any explanation as to why these practices—what did you say to him about these practices?

Mr. ELROY. After he described it, I said, "You've been in the oil business a long time. What they were training you to do was steal oil."

Mr. BALLEN. What did he say?

Mr. ELROY. He said, "No, they never used that term. They use 'volume enhancement'." I said, "What's the logical explanation when you're training somebody to falsify these figures?" He said, "Well, for instance, in cutting the gauges, reporting inaccurately the gauges, that may be due to encrustation or impurities lining the tank."

Mr. BALLEN. What did you say then?

Mr. ELROY. I said, "How many times do you have that situation?" He said, "Maybe in one tank in one hundred, so you compensate for that by bumping the gauges on all of them." That was his explanation.

I said, "Isn't there a procedure? I think API recommends that the producer and the purchaser get together and come to some agreement as to what the adjustment will be." He said that just wasn't part of the method.

On the temperature—on artificially inflating the temperature—he said that oil is hotter when it comes into the center of the tank, so you take one reading and then compensate ten degrees because it may be hotter.

I said, "How about just taking a couple of readings and get the exact temperature?" Well, that just isn't the way they were trained to do it.

Mr. BALLEN. Now, Agent Elroy, did these current Koch employees ask you for confidentiality in their interviews?

Mr. ELROY. Yes, they did.

Mr. BALLEN. Why did they ask for confidentiality?

Mr. ELROY. Because they were afraid they'd be terminated if it became—if the company found out that they had made any statements.

Mr. BALLEN. What, if anything, did the employees tell you they would tell to Koch?

Mr. ELROY. They asked us if we would furnish a copy of their statement to Koch Oil or release a copy of their statement publicly, and I told them we would not release their names or release a copy of their statement.

They indicated that there was some pressure coming on now from management to determine what this committee was doing, and they anticipated they would be interviewed right after we interviewed them because Koch was aware the committee was moving around now and interviewing people.

They indicated they were just going to say they hadn't really said anything.

We told them that they were free to say whatever they wanted to whomever they wanted, and actually didn't give them any direction. But that was their statement to us.

Mr. BALLEN. Agent Elroy, has the committee now referred this matter to the FBI, the Department of Justice, for investigation?

Mr. ELROY. Yes.

Mr. BALLEN. Specifically of Koch's practices?

Mr. ELROY. Yes.

Mr. BALLEN. And, as such, are these current employees potential targets as witnesses before a federal grand jury?

Mr. ELROY. They could be. Yes.

Mr. BALLEN. Sir, given that, why has the committee not released the names of these current employees?

Mr. ELROY. There was a feeling that the committee did not wish to interfere in any way in any actions by the Department of Justice, including not allowing any witnesses to be tainted prior to investigators and grand juries having access to them.

Mr. BALLEN. Sir, you mentioned tape recordings of the interviews that were surreptitiously done. Are those tape recordings also going to be turned over to the Department of Justice?

Mr. ELROY. Yes.

Mr. BALLEN. Now, Agent Elroy, have you and other committee investigators interviewed past employees of Koch Oil and received sworn statements from these employees throughout the country?

Mr. ELROY. Yes.

Mr. BALLEN. Did the committee specifically interview John Talbert?

Mr. ELROY. Yes.

Mr. BALLEN. Who is John Talbert?

Mr. ELROY. Mr. Talbert was a former employee of Koch Oil Company for about ten years and was in a management position in the Security Department.

Mr. BALLEN. And what, in substance, did Talbert relate to committee investigators?

Mr. ELROY. He said from time to time his department would come upon Koch employees that were stealing oil from Koch.

Mr. BALLEN. In other words, stealing for themselves?

Mr. ELROY. Yes. And that they would develop a prosecutable case, but that these people, based on a decision from management, were not prosecuted for two reasons. First, their defense was always that they had stolen more for Koch than they had from Koch. Second, even in the face of some rather large thefts of crude oil, because Koch was so over, they couldn't show a loss.

Mr. BALLEN. In fact, borne out by the numbers up on that chart here today?

Mr. ELROY. Yes.

Mr. BALLEN. Did you also interview, Agent Elroy, a former member of the board of directors of Koch Industries?

Mr. ELROY. Yes.

Mr. BALLEN. What, in substance, did he confirm to you?

Mr. ELROY. He said he had brought this overage matter up to top management and questioned them as to why they had these types of figures, and he was given some explanation as to how oil multiplied in the pipeline, and he said he subsequently made some inquiries and he felt that this was not a valid explanation.

Mr. BALLEN. Sir, is this individual currently talking to the United States Attorney's Office, or has in the past?

Mr. ELROY. I believe so.

Mr. BALLEN. Sir, did the committee also interview ex-gaugers, measurement personnel, and supervisors from Koch, many of whom were active on Indian and federal lands?

Mr. ELROY. Yes.

Mr. BALLEN. In substance, again, what was reported to the committee on a consistent basis?

Mr. ELROY. The same. Former gaugers said essentially the same. They were trained to artificially report gauging figures, to increase the temperature ten degrees, to bump the gauges, and to increase the grind-out, consistent with what everyone else had said.

Mr. BALLEN. Now, sir, how many of these interviews were conducted, approximately?

Mr. ELROY. By the committee?

Mr. BALLEN. Yes, sir.

Mr. ELROY. Over 15.

Mr. BALLEN. Did the committee also receive sworn statements?

Mr. ELROY. Yes.

Mr. BALLEN. How many of these statements have been received by the committee?

Mr. ELROY. Over 50.

Mr. BALLEN. Now, Agent Elroy, without again going into rather repetitive detail, could you just give us a few examples of what some of the statements were and who made them, for the record?

Mr. ELROY. Certainly.

Mr. BALLEN. Thank you.

Proceed, Agent Elroy.

Mr. ELROY. Donald Stark was interviewed. He stated that——

Mr. BALLEN. Did you interview him?

Mr. ELROY. Yes. He said he was employed by Koch Oil Company from 1968 to 1985. Among other things, he did some gauging. He told us the usual story about bumping the gauges and increasing the grind-out and temperature. He said that the management called it "volume enhancement."

When I asked him to sum up what he thought of Koch Oil Company gauging policy, he said, "They damn sure were crooked."

We have an affidavit from Steve Chin in Denver. He worked for Koch Oil Company. He was, at one time, the number two man in North Dakota. He said that they would get as much as six inches of oil by doing the same thing—cutting the top gauge, bumping the bottom gauge, increasing the temperatures.

He said, "The managers and we supervisors are hollered at so severely whenever there is the slightest shortage that they incorporate a permanent overage into their operation. All of the gaugers run 'long' because they are so afraid of the flack that we'll receive if they are ever short."

We talked to David Eng in North Dakota. He had been a foreman and worked for Koch for 15 years.

Mr. BALLEN. Did we talk to him, or did we receive a statement from him?

Mr. ELROY. I'm sorry. We received his statement. These were all signed statements that we received.

He again reported this same type of procedure of artificially reporting the gauging practices. He estimated that, in talking with fellow gaugers, that their figures were essentially the same as his, and that in his district they were over 4,000 to 7,000 barrels a month.

We talked to a Bill Kirtin in Tyler, Texas. He worked for Koch from 1979 to 1986. He was a superintendent. He said essentially the same thing. They increased the temperature, they falsified the run tickets, increased the BS&W, they cut the top gauge and bumped the bottom gauge.

He said, "We usually got an extra 10 to 15 barrels a load. Our overage for the district was 3,500 to 4,000 barrels a month. I estimate that to be about three to four percent of the total."

We have a statement from Martin Goode.

Mr. BALLEN. Did we interview him also?

Mr. ELROY. Yes. The committee interviewed him. Again he is reporting the same basic techniques.

He says, "I tried to be long on Indian oil and non-Indian oil."

We have a statement from a Dennis Krocker, Bakersfield, California. He worked for Koch for about six years. The same pattern. He talks about bumping the temperatures, being trained to increase the specific gravity, the BS&W.

He said, "When long, there seemed to be a feeling of jubilation among the gaugers and management personnel which encouraged gaugers to always be long. Among all management personnel, Koch's gauging procedures were designed, in their opinion, as an extra revenue-producing tactic for Koch Oil."

We have a statement from a Grant Farley in Utah. He said, "On the gauge, the oil company would lower the top gauge, raise the bottom gauge, and get two to three inches of extra oil. Even at Koch Exploration when we sold to the pipeline division, we would watch them, or they would even take from us. They were stealing from one division of the company to the other in their gauging practices."

We talked to a Mr. Leonard Wood, Sr., chief of security for Union Oil Company in Texas. According to Mr. Wood, he had a

case involving Koch Oil Company in Oklahoma. Wood had been a special investigator for the District Attorney's Office.

Wood stated that Koch is no different than any other independent. "All of them are stealing."

He said, "With regard to Indian leases, by the nature they are out-of-the-way locations. Because the leases tend to be isolated, it is more difficult to police the leases."

He said that a simple comparison of records can discern potential pattern of theft.

Mr. BALLEN. Now, Agent Elroy, as you just testified, the committee conducted, in addition to the interviews of current employees and the six surveillances, there were 15 or so interviews of ex-employees and over 50 statements received into the committee.

With reference to the statements, some of these sworn statements were received as a result of a private litigation between Bill Koch and the company, Koch Industries; is that correct?

Mr. ELROY. That's correct.

Mr. BALLEN. Sir, do you know whether or not all these 50 statements are accurate?

Mr. ELROY. We just spot checked or spot interviewed these people, so I wouldn't know for sure. I would think that when you have that many, it would be difficult to discount them all. But if that was all we had, we probably wouldn't be talking about this today.

Mr. BALLEN. Of those we did contact and were able to interview, did they in substance confirm their statements?

Mr. ELROY. Yes.

Mr. BALLEN. Now, Mr. Elroy, did the committee also put under oath top management at Koch Industries, themselves, under subpoena?

Mr. ELROY. Yes.

Mr. BALLEN. And those executives were deposed pursuant to the Senate subpoena; is that correct?

Mr. ELROY. That's correct.

Mr. BALLEN. And there were 12 executives deposed by the Senate, including Charles Koch, the chairman and chief executive officer of Koch Industries?

Mr. ELROY. That's correct.

Mr. BALLEN. Now, sir, what did top management uniformly tell the committee of the practices they engaged in measurement under oath?

Mr. ELROY. I think a fair summary would be that Koch's company policy was to be as accurate as possible and avoid loss following API standards, with any variance or adjustments made on an individual tank basis with the producer's agreement.

Mr. BALLEN. Was that the policy that was followed out in the field with the surveillances? And was that the policy related to you by current Koch people when interviewed?

Mr. ELROY. Absolutely not.

Mr. BALLEN. Now, Agent Elroy, you have reviewed documents of Koch Industry, and their official over and short reports that were turned over to the Senate pursuant to subpoena, haven't you?

Mr. ELROY. Yes.

Mr. BALLEN. And are you familiar with those documents?

Mr. ELROY. I am generally familiar with them. Yes.

Mr. BALLEN. Does the chart accurately reflect the numbers that Koch Industry provided to the Senate?

Mr. ELROY. Yes.

Mr. BALLEN. And, sir, what do those numbers show, by Koch's own admission?

Mr. ELROY. They appear to show tremendous overages, which would, of course, corroborate our findings, surveillances, and statements of employees. I don't know how you could have figures like that and not have top management at the least be aware that there is theft going on.

I could speculate and say that if this company was $12 million short that the CEO would take some drastic action to determine why they lost $12 million between the well head and the refinery. But when they're $12 million long—and this seems to be a continuous pattern—I don't know how you could draw any other conclusion but that this is top management-directed theft.

Mr. BALLEN. Sir, have you compared the amount of barrels of oil that Koch purports to be over in their over and short reports specifically to Binger Oil Field with the actual amount of theft the committee discovered through its surveillances and the interviews with employees?

Mr. ELROY. Yes.

Mr. BALLEN. How do those two numbers compare?

Mr. ELROY. Taking into account that what we are doing is taking a statement from someone observing them, taking their statements and multiplying it by the number of tanks he is servicing, we come out with a figure that Koch stole about $400,000 worth from that one field. They are reporting a figure about one third less than that.

Mr. BALLEN. On an annual basis?

Mr. ELROY. On an annual basis.

Mr. BALLEN. So, in fact, in these numbers provided by Koch, the amount of the overages may be understated?

Mr. ELROY. They may be. Yes.

Mr. BALLEN. Based on our independent finding out in the field?

Mr. ELROY. That's right.

Mr. BALLEN. Now, did Charles Koch, chairman of Koch, and other top management authenticate the figures during their depositions?

Mr. ELROY. Yes.

Mr. BALLEN. And did Charles Koch state whether or not he reviewed the figures on a quarterly basis?

Mr. ELROY. Yes, he did.

Mr. BALLEN. What did he say?

Mr. ELROY. He said he did review them.

Mr. BALLEN. Now, what did Charles Koch testify was the reason, if any, Koch Oil obtained so much more oil than it paid for?

Mr. ELROY. He said the reason was that the oil measurement——

Mr. BALLEN. Please quote from his deposition exactly, sir.

Mr. ELROY. He said, "Oil measurement is a very uncertain art." He said, "The people measuring aren't rocket scientists." He said, "No one can make an exact measurement." He said, "There was a lot of uncertainty and tremendous variations."

Mr. BALLEN. Let me ask you this question: sir, based on the numbers we received from some of the other major companies, do they show that large degree of uncertainty in their measurements or not?

Mr. ELROY. No, they don't. If you look at the actual pattern you will see that they are long and then they are short and long and short. It kind of evens out.

Mr. BALLEN. Now, sir, did the committee also depose Koch Oil's vice president of trucking and a former chief gauger by the name of Keith Langhoffer?

Mr. ELROY. That's correct.

Mr. BALLEN. What explanation, if any, did Mr. Langhoffer give?

Mr. ELROY. When he was asked about the overage, he replied to the question, "Koch was over because of an aggressive approach to purchasing crude oil."

Then he went on to say that it was important that the company was not short, and if an employee was short he said, "We probably would take him off the gauging crew and put him back into the maintenance crew."

And then he was asked, "And if an employee was over or long on a regular basis?" He said, "Koch didn't do anything to him."

Mr. BALLEN. Agent Elroy, did the committee interview some of the victims of Koch's practices?

Mr. ELROY. Yes.

Mr. BALLEN. Who are those victims?

Mr. ELROY. American Indian victims are individual allottees. We also interviewed some people at Phillips Oil Company, which are also victims. But the people that we were most directly concerned with were the individual Indian allottees, some of which live in abject poverty and depend upon the royalties from this oil.

Mr. BALLEN. What did the Indian allottees tell the committee?

Mr. ELROY. They said that in the last two years their amount of money they were receiving had declined.

Mr. BALLEN. And were these—you said the last two years? The ones you specifically are referring to now are people where Koch bought out the Big Heart operation?

Mr. ELROY. Yes.

Mr. BALLEN. And since Koch took over, their royalties declined?

Mr. ELROY. That's correct.

Mr. BALLEN. Is that a fair statement?

Mr. ELROY. That's a fair statement of what they said. In fairness, I think——

Mr. BALLEN. You don't know whether or not——

Mr. ELROY [continuing]. There are other factors that could be incorporated, which would include what the price of oil was, although in the last couple of years I think it has been fairly stable. It would also have to do with how much the wells were producing, and so forth.

Mr. BALLEN. But obviously it is a clear fact that if millions are being stolen, your royalties are going to decrease?

Mr. ELROY. That's right.

Mr. BALLEN. Sir, has the committee examined, in the course of subpoenaing close to 30 natural resource companies—oil and gas

companies—has the committee come across other companies who are posting large overages?

Mr. ELROY. Yes.

Mr. BALLEN. Could you describe those kinds of companies?

Mr. ELROY. They are independents—smaller independents. We did not come across any majors that appear to be engaging in this practice.

Mr. BALLEN. No company as large as Koch?

Mr. ELROY. No.

Mr. BALLEN. Now, does the committee know whether or not, based upon—has the committee uncovered evidence other than the overage figures that these independents, too, may be stealing or engaged in deliberate mis-measurement at this point in time?

Mr. ELROY. We certainly don't have the information that we do involving Koch. I have to point out that this committee is not a law enforcement agency. They don't have the resources. This was not an FBI-type investigation; this was a random sampling to see what is going on out there.

Mr. BALLEN. And what is going on out there, based on that random sampling?

Mr. ELROY. It looks like there is a lot of theft of crude oil from American Indians.

Mr. BALLEN. And what would you say as to the opportunity that exists to engage in such theft?

Mr. ELROY. I would think it would be wide open. There appears to be no enforcement. There is a difference between investigating an allegation of oil theft and random enforcement of oil gauging procedures. Obviously that falls to some agency like the Bureau of Land Management.

We were unable to—as far as we were able to determine, there is a complete vacuum. Nobody in the United States Government seems to be doing anything about monitoring this situation.

I don't know how you could expect even a reasonably well-informed, intelligent person to be able to go out to the well-head and follow the gauger and have his own centrifuge and his own thermometers and the skill to check this out, let alone some of these poor Indian people who are living in poverty and just relying on the United States Government to give them some measure of protection.

Mr. BALLEN. Is that measure there?

Mr. ELROY. We didn't find it.

Mr. BALLEN. Now, sir, you testified earlier that we had conducted surveillance of Vintage Oil, and although there was accuracy in gauging of that oil, did we find another problem with Vintage in the way that that oil operation was being monitored by the Federal Government?

Mr. ELROY. Yes.

Mr. BALLEN. What was that problem?

Mr. ELROY. This should not reflect upon Vintage Oil Company. We thought we had a problem with them. We interviewed them. They were very cooperative. What they said was that they were running the oil from Indian and non-Indian leases into one, big tank—and this is a heavy-producing area. They were comingling.

There would be no really accurate way to measure how much came from each lease.

When we questioned them about this they said that the field had been communitized; that is, that it was agreed that they would just split the profits from the sale of this oil among the allottees equally.

But what we determined is that the Indian producing wells were producing over four times what the non-Indian wells were producing, and then the profits were divided equally.

Well, if I were an attorney or anyone looking out for the Indians' interest, I would de-communitize this field so that these Indian people would get their fair share. They're not getting a fair shake on this. Nobody seems to be monitoring this.

Mr. BALLEN. Who is responsible for de-communitizing? The Bureau of Indian Affairs?

Mr. ELROY. Yes. They are the ones that originally agreed to do this. It can be undone, and it probably should be——

Mr. BALLEN. So although there is no actual theft going on here from the American Indians involved in this deal, nonetheless they are losing a substantial amount of royalties because there is no protection to their interest?

Mr. ELROY. That's right. And Vintage is not acting, in my opinion, in bad faith. It is easier for them to make out one check and be done with it and have it communitized and not have to measure it separately, but I'm sure they would do that if they were required to—if they were asked to do that.

Mr. BALLEN. Mr. Chairman, I have no further questions of the witness.

Senator DECONCINI. Thank you, Mr. Ballen.

Agent Elroy, you talked about communitizing the field. When you said "communitize," you mean allottees, Native Americans and non-Native Americans, all joining in on operation of one field as though it were one well? Is that what you mean?

Mr. ELROY. Yes. At the time you get an order to disburse the profits, they make some determination as to how it is to be done, and all parties agreed to split it evenly.

Senator DECONCINI. So the allottees supposedly, as far as you know, voluntarily agreed to this? Nobody coerced them into it?

Mr. ELROY. No. It requires Bureau of Indian Affairs——

Senator DECONCINI. That's my next question. The BIA would have to approve such a community agreement, right?

Mr. ELROY. Yes.

Senator DECONCINI. And did you find this to be a common practice, or just one incident that you know of?

Mr. ELROY. We just happened to run across it because we happened to randomly surveil one of these locations. Immediately it came to our attention. We suspected some misdeeds, and so we looked into it to see why they're running all this oil into one tank, because the company was reporting it as though they were individual figures from each well, and we knew that that wouldn't have been possible based upon examining the oil field.

When we talked to the company, they were reporting that actually inaccurately, but the upshot of it was that it wouldn't make any difference—the bottom line figure was correct.

Senator DECONCINI. They were reporting that each well had the same amount? Is that what they were reporting?

Mr. ELROY. No. They would stop production once a year and they would check the flow on each well.

Senator DECONCINI. And measure that?

Mr. ELROY. And they would measure that and report that on a monthly basis as though they were measuring it every month.

Senator DECONCINI. But it made no difference from the pay-out?

Mr. ELROY. Right. We pointed out to them that they were essentially misreporting, and they said they would correct it and put down there exactly what they were doing. But they weren't stealing any oil here. They were just doing the bidding of the BIA.

Senator DECONCINI. Do you have any reason to believe that that's a common practice, or do you have any knowledge?

Mr. ELROY. I don't know.

Senator DECONCINI. You talked about the other companies of which you did some random sampling and inquiring. How many companies were involved in this investigation?

Mr. ELROY. There was at least one other that we suspect, based upon their figures, are engaged in oil theft.

Senator DECONCINI. And were you able to substantiate?

Mr. ELROY. No. We really didn't get started on it.

Senator DECONCINI. You made reference that there was just no enforcement. In the course of your investigation, did you come across any BLM people or anybody in the government who you could ask the question of whether or not they were charged with enforcing or were doing anything about it?

Mr. ELROY. We did have some questions asked by committee members of some BLM people, and I think they're going to more fully explore that. But the essence of it was that they just weren't doing anything.

Senator DECONCINI. You read several statements of former employees of Koch Industries or Koch Oil Company. They've all been relieved of their employment, I take it.

Mr. ELROY. Not that I know of.

Senator DECONCINI. Many of those are still employed today?

Mr. ELROY. Yes. Of course, we're talking about in the recent past that we did this, and I'm not sure the company could identify them. We withheld their names.

Senator DECONCINI. Right. So, as far as you know, they are still working, those that are unnamed?

Mr. ELROY. As far as I know.

Senator DECONCINI. Who is Charles Koch? Can you explain that?

Mr. ELROY. He's the chief executive officer of Koch Oil Company. This is a non-public——

Senator DECONCINI. Can you tell us a little bit about the company? Do you know its background?

Mr. ELROY. I think we had some statistics on it. It seemed like their gross sales were somewhere around $14 billion.

Senator DECONCINI. Is it a wholly-owned family corporation?

Mr. ELROY. Closely-held, non-public corporation.

Senator DECONCINI. I have no further questions.

Senator McCain.

Senator MCCAIN. Thank you for your testimony in what obviously has been a very long and difficult process for you.

As I believe you mentioned to this committee, you have been involved with the FBI in investigations for many years; is that correct?

Mr. ELROY. Yes, sir.

Senator MCCAIN. How many years?

Mr. ELROY. For 18 years. You're asking how long I've been an FBI agent?

Senator MCCAIN. Yes, sir.

Mr. ELROY. That's 18 years.

Senator MCCAIN. In light of your experiences during this investigation of yours, could you tell the committee first of all, to perhaps sum up, what you think is wrong with the process, who you think is wrong, and what you think needs to be addressed?

Mr. ELROY. We understand—you're asking my personal opinion, and any time I'm testifying I'm doing so for the committee. I can't certainly speak for the FBI.

Senator MCCAIN. I'm asking for your personal opinion, given the light of the years of experience you have had in this kind of work.

Mr. ELROY. There are several things that could be done.

Senator MCCAIN. First of all, what's wrong?

Mr. ELROY. The underlying thing that's wrong is that they're stealing oil. That's what is wrong. There are ways to deal with that.

Senator MCCAIN. Let me interrupt again. Why are they getting away with stealing oil?

Mr. ELROY. For a number of reasons. One, there is no oversight. Out in the street here if you threw a few billion dollars out it probably wouldn't be there in the morning. It might be a problem with who had charge of that money before. So we're not watching the hen house here.

Senator MCCAIN. So people are stealing oil, and they're stealing it because there is lack of oversight. We have some crooked people?

Mr. ELROY. That's correct. And a lot of ordinarily pretty honest people that are gaugers that are being pressured to do this. They're not getting anything out of this but their wages, but they're being forced or pressured into this activity.

Senator MCCAIN. And you are convinced that, from your experience, that this is widespread and is costing Native Americans millions of dollars, if not tens of millions of dollars, a year?

Mr. ELROY. Yes.

Senator MCCAIN. That's your view?

Mr. ELROY. Yes, sir.

Senator MCCAIN. What do we need to do?

Mr. ELROY. I think that somebody is going to have to get a grip on the oversight, and if the Bureau of Land Management has that responsibility, either they need to contract with companies that do this kind of random sampling and oversight and develop a comprehensive program of protecting these peoples' rights. That's part of it.

Second, from a prosecutor's standpoint or from an investigator's standpoint, something as simple as requiring some language on those run tickets that makes it a crime to falsify those run tickets,

that every time they sign it they say "I'm swearing, under penalty of whatever the statute is, that this is true and correct, I was present." I think that would go a long way in stopping someone from signing the ticket, and certainly if they did, with a random oversight, all you'd have to prove is that, like the invisible man, he wasn't there and he falsified the ticket, and that's the violation. I think that would go a long way to stopping this.

When we see effective gauging in Big Heart and some of these other companies, they have company or corporate designed oversight to protect the company. Where they have that random oversight they don't have these problems.

Senator MCCAIN. Do you feel there are sufficient laws on the books today to prevent these occurrences if those laws are enforced, and enforced through proper regulation and oversight on the part of the cognizant agencies?

Mr. ELROY. With possibly the exception of making it an offense to falsify those tickets on government lands. That would certainly be a helpful law.

Senator MCCAIN. But, if you were——

Mr. ELROY. But there are a number of other laws that are available to prosecute people who engage in theft of oil.

Senator MCCAIN. You would recommend to this committee that we should focus our attention on the administrative procedures and the oversight of their cognizant agencies rather than proposing a new piece of legislation, with the exception that you mentioned?

Mr. ELROY. Yes.

Senator MCCAIN. Finally, I guess I would again ask your personal opinion: how in the world has this been going on so long?

Mr. ELROY. I guess nobody ever took a look at it. In talking indirectly to the BLM, they're not referring these matters—when they come across theft, they don't refer it to the FBI. That is the proper agency to investigate if they think they really have an oil theft. They're not referring the cases. I think you'd have to inquire of them why they don't have a procedure in place to refer these matters so that there can be some action taken when they do discover it.

Senator MCCAIN. Finally, it is your view that we're talking about tens of millions of dollars a year that, from what you've been able to ascertain, are not going to the rightful recipients?

Mr. ELROY. Yes.

Senator MCCAIN. Is that the proper range, from your point of view?

Mr. ELROY. It is difficult because we did such a random sample, but just the figures we're looking at look pretty impressive. I would think that the American Indian people are being grossly cheated out of a lot of money.

Senator MCCAIN. And these are Americans who least can afford to lose that income.

Mr. ELROY. Some of them certainly are. I've seen some that are relying on where to get their next meal from some of these royalty payments.

Senator MCCAIN. Thank you, Agent Elroy. We thank you for all the hard work you've done on this investigation and previous inves-

tigations. We don't anticipate keeping you more than a couple more years. [Laughter.]

Thank you, Mr. Chairman.

Senator DECONCINI. Agent Elroy, when you examined procedures at the BLM, did you find that complaints were ever filed? Do you know of any?

Mr. ELROY. I know that they had received complaints based upon what they were saying. The only reason I'm hesitant about really jumping into this—and I'd kind of like to—is that I think that Mr. Ballen has a whole program planned and is going to give you ample opportunity to talk directly to these people.

Senator DECONCINI. I know, but I wondered if, in the course of your investigation, you came across any allottees or anybody who complained to the BLM and it was relayed back to you that nobody did anything, or what happened?

Mr. ELROY. Yes. Allottees complain all the time to the BLM, and——

Senator DECONCINI. And there is no procedure——

Mr. ELROY [continuing]. There's no action.

Senator DECONCINI [continuing]. And no action?

Mr. ELROY. No action.

Senator DECONCINI. And no follow-up or anything else?

Mr. ELROY. There appears to be none. I haven't had an in-depth look at the BLM, just the random contact that we've had.

Senator DECONCINI. Just in your observation, you're opinion, only, but having worked for the Bureau, if the BLM turned over a case, sent a case to you or asked for you to come in and investigate, would the FBI have the necessary resources to do that?

Mr. ELROY. If they refer a case to the FBI it will be investigated.

Senator DECONCINI. It would be investigated?

Mr. ELROY. Absolutely.

Senator DECONCINI. So it's not a question of not having the resources to attempt to do this, but the FBI just has not been asked.

Mr. ELROY. We haven't been asked.

Senator DECONCINI. How long have you been in Oklahoma?

Mr. ELROY. About 17 years.

Senator DECONCINI. And do you know if the Bureau has ever been asked to investigate any oil fraud cases on Indian land—allottees or otherwise?

Mr. ELROY. I don't have any personal knowledge. That doesn't mean it hasn't happened.

Senator DECONCINI. But you don't know of any?

Mr. ELROY. I don't know of any.

Senator DECONCINI. Thank you, Agent Elroy. I join my colleague here. We are most grateful for the dedicated work that you have contributed to this investigation throughout, and we are appreciative of the time that you have given to us here today and in the past, and hope you'll stay with us long enough to draw up our final report.

Thank you.

Mr. ELROY. I hope that is some time before retirement.

Senator DECONCINI. I do, too. We have a sunset clause on the life of this committee, thank goodness.

Thank you.

Our next witness will be Greg Pyles, Chief Security officer, Apache Oil Company.

[Witness sworn.]

Senator DECONCINI. Please sit down and state your name. Mr. Sollers will question you.

**STATEMENT OF GREG L. PYLES, CHIEF SECURITY OFFICER, APACHE OIL, DENVER, CO**

Mr. SOLLERS. Mr. Pyles, state your full name for the record.

Mr. PYLES. Greg L. Pyles.

Mr. SOLLERS. How are you employed, sir?

Mr. PYLES. Manager of corporate security for Apache Corporation.

Mr. SOLLERS. And how long have you been the manager of corporate security for Apache?

Mr. PYLES. Six years.

Mr. SOLLERS. What kind of company is Apache?

Mr. PYLES. Apache Corporation is a New York Stock Exchange listed, publicly traded, oil and gas exploration and production company.

Mr. SOLLERS. And is Apache an actual producer of oil on many leases across the country?

Mr. PYLES. We sure try. Yes, sir.

Mr. SOLLERS. Where are you located?

Mr. PYLES. Corporate headquarters are in Denver, Colorado.

Mr. SOLLERS. And, Mr. Pyles, what is your law enforcement background?

Mr. PYLES. Prior to coming to work for Apache, I was under-sheriff of Roger Mills County in Western Oklahoma. Prior to that I was a law enforcement officer for the U.S. Forest Service.

Mr. SOLLERS. And do you have a substantial oil and gas experience?

Mr. PYLES. About 12 years. Yes, sir.

Mr. SOLLERS. Does that include when you were an under-sheriff in Oklahoma?

Mr. PYLES. Yes, sir.

Mr. SOLLERS. You were doing some oil and gas cases then? Is that true?

Mr. PYLES. Yes, sir. I was assigned to a U.S. Justice Department Task Force assigned to oil field crimes.

Mr. SOLLERS. How many oil and gas investigations would you say you've been involved in, both at the time you were an under-sheriff in Oklahoma and during your period of time with Apache?

Mr. PYLES. All inclusive, oil- and gas-related investigations?

Mr. SOLLERS. First of all, when you were under-sheriff, how many?

Mr. PYLES. In excess of 60 to 100, I would assume.

Mr. SOLLERS. And how about as director of security at Apache?

Mr. PYLES. Now are you talking about crude oil theft or oil- and gas-related investigations?

Mr. SOLLERS. Let's keep it at crude oil theft.

Mr. PYLES. Probably in excess of 30, sir.

Mr. SOLLERS. What does an investigation of crude oil theft entail?

Mr. PYLES. Well, the investigation of crude oil theft would involve, first, establishing a method. It is not different than any other investigation in trying to determine where it went and to get it back.

Mr. SOLLERS. Are there a range of methods that can be used in investigating crude oil theft?

Mr. PYLES. Certainly. It depends, first, on the method as to the trail that is left. Typically, crude oil has to be sold somewhere, and that's where the trail is.

Mr. SOLLERS. And one means of checking for crude oil theft is something called "back gauging"; is that correct?

Mr. PYLES. That's correct. We have had an extensive back gauging program for the last five years.

Mr. SOLLERS. And back gauging is basically going in and measuring the oil after a purchaser has measured it himself; is that correct?

Mr. PYLES. That's a part of it. Yes, sir.

Mr. SOLLERS. Or you could gauge before the purchaser comes in and gauges also; is that true?

Mr. PYLES. We try to do both.

Mr. SOLLERS. Is crude oil theft in the field a substantial problem, in your view?

Mr. PYLES. Based on our experience it has been in the past. It rises and falls pretty much with the price. There is a ready market for stolen crude oil, and as long as that exists it will continue to be a significant problem to all producers. Yes, sir.

Mr. SOLLERS. And is there a substantial opportunity for crude oil theft?

Mr. PYLES. Given the nature of the business, yes, sir, there is.

Mr. SOLLERS. Isn't it the case that frequently there is no supervision of purchasers when they are obtaining oil at a site?

Mr. PYLES. That's the policy of many companies. Yes, sir, Mr. Sollers. At Apache we have changed that policy in the last three years.

Mr. SOLLERS. Are there many types of crude oil theft?

Mr. PYLES. Quite a number that we are aware of. Yes, sir.

Mr. SOLLERS. Give a few examples, if you would, of the types of crude oil theft that exist in the field.

Mr. PYLES. One type would be smash and grab type thefts where an unknown third party comes in, breaks locks and seals, and loads the oil in a tank truck and hauls it away.

However, the most common type of crude oil theft involves some type or some form of collusion and falsification of records. Typically this would involve a company employee, a producer employee, and/or a purchaser employee. It can involve a mineral owner. There are a number of those types of schemes out there.

Mis-measurement has been discussed here today. It is also another method.

Mr. SOLLERS. That would be mis-measurement by purchasers of crude oil?

Mr. PYLES. Yes, sir. That is correct.

Mr. SOLLERS. And, in that event, that would not necessarily require the collusion of an operator or producer, would it?

Mr. PYLES. No, sir. Not necessarily, given the nature of the business it would not.

Mr. SOLLERS. A purchaser can come in at an unattended site, falsify a ticket, and it wouldn't require any collusion by the person that is running that site, true?

Mr. PYLES. No, sir. It wouldn't require direct collusion. If he's doing his job he ought to know what the measurements are.

Mr. SOLLERS. Is it your experience that a lot of lease operators or producers are not doing their job—not supervising their sites?

Mr. PYLES. We have found many instances where that is true. Yes, sir.

Mr. SOLLERS. Do you have any estimate as to the percentage of oil theft that is actually caught?

Mr. PYLES. Mr. Sollers, I'm not sure I could speak to the direct percentages. One industry figure is 20 percent. That's a figure that I have heard from knowledgeable people. It is not one that we have developed, ourselves.

Mr. SOLLERS. What steps have been taken by your company to limit oil theft?

Mr. PYLES. In the last three years we have implemented a very rigid procedure, styled directly along the lines of the API-approved or recommended procedures for measurement and sale and transfer of custody of crude oil.

Mr. SOLLERS. And what do those procedures include?

Mr. PYLES. First of all, they include a physical witness at the scene when transfer takes place, except in emergency or just weather-related events where he can't be there.

Mr. SOLLERS. When a purchaser comes into an Apache lease site, it is Apache's policy to actually have a corporate representative there on site; is that true?

Mr. PYLES. That is correct.

Mr. SOLLERS. What other procedures do you use?

Mr. PYLES. In many high volume fields where it is cost effective, we equip our pumper trucks with measurement equipment such as you have seen demonstrated here today, including centrifuges and the proper solvents and so forth to work the oil themselves prior to the purchaser arriving at the location.

Mr. SOLLERS. A method of back gauging; correct?

Mr. PYLES. Indeed. Typically in our business back gauging would involve a third party. You wouldn't involve the lease operator because you would also want to check him, as well as the purchaser.

Mr. SOLLERS. Has your program been successful?

Mr. PYLES. We feel that it has, Mr. Sollers. We don't have any specific numbers to rely on, but we feel like it has been very effective.

Mr. SOLLERS. Mr. Pyles, let me direct you to 1986. Did you receive information from an anonymous source that Koch gaugers were taking oil from Apache wells without paying for the oil?

Mr. PYLES. Yes, sir, we did.

Mr. SOLLERS. And what did you do in response to receiving that information?

Mr. PYLES. We scheduled a project to back gauge or test or work the oil ahead of the purchases and compare that to what was worked by the purchaser.

Mr. SOLLERS. And that program was instituted when, sir?

Mr. PYLES. I believe that was September of 1987 when we did that project.

Mr. SOLLERS. You instituted a program on how many wells?

Mr. PYLES. The target wells—I believe there were five of them.

Mr. SOLLERS. And what, in fact, did you do?

Mr. PYLES. We identified the tanks where oil had been isolated in the tank and ready for sale. At that point we used an expert in the field to come in and work with us, and we worked the oil. By working the oil, I mean taking all the appropriate measurements to determine what the apparent net volume of saleable hydrocarbons were in the tank.

Mr. SOLLERS. You put in place a procedure to see whether or not Koch was measuring accurately; is that true?

Mr. PYLES. That's correct.

Mr. SOLLERS. Now, in addition to this information you had received from an anonymous source, had you also heard information regarding Koch's gauging practices generally?

Mr. PYLES. Yes, sir. We had information given to us over a period of time.

Mr. SOLLERS. And what was that information?

Mr. PYLES. That in certain offices perhaps there was a problem with pressure on the gaugers. We had not checked that out, but we had heard that from time to time from various sources.

Mr. SOLLERS. And was that pressure on gaugers to mis-measure or take oil?

Mr. PYLES. Yes, sir.

Mr. SOLLERS. Now, did you proceed with an analysis of these five wells that you had identified?

Mr. PYLES. Yes, we did.

Mr. SOLLERS. And what did you determine?

Mr. PYLES. We determined that the Koch gauger that was purchasing the oil on those five leases—I believe there were two gaugers involved—were not using API standards, and that the measurements were grossly incorrect.

Mr. SOLLERS. In fact, what did you determine that they were doing with regard to the actual measurements?

Mr. PYLES. If I recall correctly, Mr. Sollers, one gauger was not taking the temperature of the product. I believe he was guessing at the temperature and doing a grind-out or a BS&W check only once a week on wells that had numerous loads a day ready to go on them.

The other gauger falsified both the temperature of the top gauge, the bottom gauge, the BS&W content, and used an improper solvent.

Mr. SOLLERS. Did Koch provide any justification—and by Koch I mean the company or the gaugers themselves when they made their measurements—for using these methods?

Mr. PYLES. We only confronted one of the gaugers before going to Koch management with our problem. That gauger indicated that he was under a tremendous amount of pressure to not be short.

Mr. SOLLERS. And did either of these gaugers leave any sort of ticket or documentation for using these methods?

Mr. PYLES. They left a ticket that had numbers on it, but they didn't leave any documentation for using those methods.

Mr. SOLLERS. They didn't give any justification for using those methods, did they?

Mr. PYLES. No, sir.

Mr. SOLLERS. Are any of those methods—and we're talking about cutting the top gauge, bumping the bottom gauge, bumping the BS&W, bumping the temperature—acceptable under API standards?

Mr. PYLES. Not unless there has been some prior agreement between the producer and the purchaser, Mr. Sollers.

Mr. SOLLERS. Was there any such agreement in this instance?

Mr. PYLES. Not that I am aware of. No, sir.

Mr. SOLLERS. And did you, in fact, observe one of these gaugers?

Mr. PYLES. Yes, I did.

Mr. SOLLERS. And what was his name?

Mr. PYLES. I believe his name was Mr. Rivas—R-I-V-A-S, I believe.

Mr. SOLLERS. Is that R.W. Rivas?

Mr. PYLES. Yes, sir. I believe that is correct.

Mr. SOLLERS. And what did you observe Mr. Rivas doing?

Mr. PYLES. This was a fairly warm day in mid-September, as I recall, and Mr. Rivas laid his thermometer on top of the tank in the direct sunlight prior to putting it in the oil, and then he left it in the oil very briefly—just a matter of seconds—to read the temperature.

After we discussed the proper way to do it, then he did it the proper way and we had a 22-degree difference in the temperature of the product.

Mr. SOLLERS. Obviously the hot tank had heated that thermometer up considerably; is that true?

Mr. PYLES. It certainly appeared to have. Yes, sir.

Mr. SOLLERS. What else did you observe Mr. R.W. Rivas doing?

Mr. PYLES. Mr. Rivas appeared to have rigged or manipulated his thief so that rather than trip an inch and a half off the bottom, it would trip on the bottom of the tank, and thereby increase the amount of BS&W that would show or sediment that would be in his sample.

Mr. SOLLERS. BS&W tends to accumulate on the bottom of the tank; is that true?

Mr. PYLES. Yes, sir, that's true.

Mr. SOLLERS. And when you're referring to the thief, you're talking about that instrument that traps a supposedly representative sample of the tank; is that true?

Mr. PYLES. That's correct.

Mr. SOLLERS. What else did you observe Mr. Rivas do?

Mr. PYLES. After he had obtained his samples, Mr. Rivas used a solvent of unleaded gasoline, which is an unapproved solvent, or certainly not recognized by API or Apache as being a solvent that we want to cut the product with to sample it. Unleaded gasoline typically has an amount of water in it that can be significant.

Mr. SOLLERS. Could that affect the BS&W by increasing the sediment and water calculation?

Mr. PYLES. That's correct.

Mr. SOLLERS. And, of course, that's an amount which the purchaser doesn't have to pay for; is that true?

Mr. PYLES. Yes, sir, that's correct.

Mr. SOLLERS. And what else did you observe Mr. Rivas do?

Mr. PYLES. Mr. Rivas had a habit of licking his thumb before he shook the sample. His thumb went over the open end of the tube, and that tended to put a little extra liquid in the beaker, also.

Mr. SOLLERS. Did you, in fact, observe that?

Mr. PYLES. Yes, sir, I did.

Mr. SOLLERS. Did Mr. Rivas have any other tricks that you observed?

Mr. PYLES. Mr. Rivas spun the product at ambient temperature for approximately one minute, and then proudly displayed a significant amount of BS&W—what appeared to be BS&W—in the bottom of the sample.

When we heated the product to 120 degrees—I believe that was as high as his centrifuge would go—and spun it for ten minutes, we had less than a trace of measurable BS&W—the difference being saleable paraffin hydrocarbons that were not evenly distributed in the sample.

Mr. SOLLERS. Mr. Rivas came up with a BS&W content of what, sir?

Mr. PYLES. I believe his original calculation was—it was pretty high. I don't have the exact number in front of me, but it was—I want to say it was approaching two percent.

Mr. SOLLERS. Two percent?

Mr. PYLES. If I'm not mistaken.

Mr. SOLLERS. Which is a full two percent that the purchaser would not have to pay for of that load; is that correct?

Mr. PYLES. Yes, sir, that's correct.

Mr. SOLLERS. What's an ordinary range of BS&W content?

Mr. PYLES. Mr. Sollers, I'm not sure there is an ordinary range for BS&W content with regard to crude oil.

Mr. SOLLERS. Well, let me ask you this: when you recalculated that BS&W number, what did you come up with?

Mr. PYLES. Well, as a producer we would have called it a trace, or less than 1/10 of 1 percent.

Mr. SOLLERS. You came up with less than 1/10 of 1 percent, and Mr. Rivas had come up with a full 2 percent; is that true?

Mr. PYLES. That's my recollection.

Mr. SOLLERS. What did you say to Mr. Rivas?

Mr. PYLES. Well, at that point I asked him to leave. We were pretty much done. We had discussed why he was doing it through the operation, and he had indicated that he was going to get in a lot of trouble and it didn't look like there was any point in continuing the conversation.

Mr. SOLLERS. And what did you end up doing with regard to this whole incident?

Mr. PYLES. We contacted the Koch—I believe it was a district office in Duncan, Oklahoma—and discussed the issue with them.

Mr. SOLLERS. Did you subsequently submit a claim to Koch for your calculation of the amount of oil being taken without being paid for?

Mr. PYLES. That's correct.

Mr. SOLLERS. And how much was that claim?

Mr. PYLES. As I recall, sir, it was approximately $100,000.

Mr. SOLLERS. That was $100,000 on five wells? Is that true?

Mr. PYLES. That's correct.

Mr. SOLLERS. For what period of time?

Mr. PYLES. Mr. Sollers, I believe that calculation was done for a 12-month period.

Mr. SOLLERS. And did Koch pay that claim?

Mr. PYLES. Yes, they did.

Mr. SOLLERS. In your experience, are other companies engaging in similar types of mis-measurement?

Mr. PYLES. We've seen it in another instance with regard to a smaller independent. I don't believe any large majors have any on-going problems that I'm aware of.

Mr. SOLLERS. As you previously testified, there is a substantial opportunity for such mis-measurement; is that true?

Mr. PYLES. Yes, sir, there is.

Mr. SOLLERS. Now, are you aware of BLM—the Bureau of Land Management—and its enforcement ability?

Mr. PYLES. I believe so. Yes, sir.

Mr. SOLLERS. In your opinion as a director of corporate security at Apache, with substantial experience in the oil field, does BLM currently have the ability to detect this type of theft?

Mr. PYLES. I don't believe the mechanisms are in place that would allow them to. I'm not sure I'm qualified to assess their abilities.

Mr. SOLLERS. You've certainly had a fair amount of experience with BLM, or at least you have experience with the leases; is that true?

Mr. PYLES. Yes, sir, that's correct.

Mr. SOLLERS. And to your knowledge, does BLM currently have the ability to back gauge?

Mr. PYLES. To my knowledge, with the manpower limitations, coupled with the other duties that BLM has, probably back gauging would be an added duty that I'm not sure they'd have the ability to carry out at this point.

Mr. SOLLERS. And, in fact, Apache has a number of federal and Indian leases, do they not?

Mr. PYLES. That's correct. Yes, sir.

Mr. SOLLERS. And so that is where you gained your experience with BLM, which has oversight over those leases; is that true?

Mr. PYLES. Yes, sir. That's correct.

Mr. SOLLERS. Now, you're aware of the nature of BLM inspections. What are they looking for when they are coming in, within the range of your experience?

Mr. PYLES. The BLM inspection program, as it currently exists, appears to be a check list review of a producing location to look for locks and seals as dictated by regulations, and compliance with a previously filed security plan.

Mr. SOLLERS. Would such a program be able to detect the more sophisticated forms of theft?

Mr. PYLES. Probably not. No, sir.

Mr. SOLLERS. And most theft in the oil field is sophisticated, is it not, as opposed to the blatant smash and grab?

Mr. PYLES. Yes, sir. And I want to point out that the reason that BLM is not able to detect those thefts is that these types of thefts, in order to properly investigate them, require full and complete access to records and documents. You can't investigate them without them. And, to my knowledge, BLM does not readily have those records available at MMS.

Mr. SOLLERS. The records are actually kept at Mineral and Mining; is that true?

Mr. PYLES. That's correct. Yes, sir.

Mr. SOLLERS. And BLM doesn't even have access to the records which would allow them to discern a pattern of theft; is that also correct?

Mr. PYLES. Not on a frequent and regular basis. No, sir, they do not have access to the documents. They may have free access to them, but as opposed to knowing where to go and who to talk to, I'm not sure they do.

Mr. SOLLERS. Have you ever referred any cases to BLM for investigation?

Mr. PYLES. No, sir, I have not.

Mr. SOLLERS. Why not?

Mr. PYLES. We've had a good relationship with the FBI and the IRS over a number of years, and they seemed to have developed the expertise to handle minerals cases.

Mr. SOLLERS. Have you ever referred any cases of purchaser theft for prosecution?

Mr. PYLES. No, sir, I don't believe so.

Mr. SOLLERS. Mr. Chairman, I believe that concludes my questions.

Thank you, Mr. Pyles.

Senator DECONCINI. Thank you.

Mr. BALLEN. Mr. Chairman, just to clarify the record, Mr. Sollers asked the witness if he has referred any cases of theft to the BLM. Mr. Chairman, as you know, the committee put under oath well in excess of 25 companies and, indeed, approximately 30 companies. Many of these companies were asked the same question—whether or not they had referred theft to BLM.

Uniformly, all the companies—and I'd like this to be entered into the record—reported that they did, indeed, refer thefts to BLM. Once they referred them, they never even heard back from BLM again.

Senator DECONCINI. The record will note that.

Mr. Pyles, I believe you said you did refer some cases to the Federal Bureau of Investigation?

Mr. PYLES. That's correct. Yes, sir.

Senator DECONCINI. How many cases have you referred to them, to your knowledge?

Mr. PYLES. In the last six years probably sixty.

Senator DECONCINI. Sixty?

Mr. PYLES. Yes, sir. Not all crude oil cases. Some of those were other types of white collar crime.

Senator DECONCINI. And do you know the disposition of any of those cases?

Mr. PYLES. Yes, sir, I do.

Senator DECONCINI. And can you give us some summary or what happened to some of those cases? Were some of those thefts of oil?

Mr. PYLES. Yes, sir.

Senator DECONCINI. Similar to what we are discussing here today?

Mr. PYLES. Similar. They did not involve a purchaser; they involved a salt water hauler. But there were successful prosecutions of all the cases that we referred. I'm not aware of any cases that have not been successfully prosecuted.

Senator DECONCINI. And did any of them involve the crash and grab technique?

Mr. PYLES. No, sir. The Apache Corporation has not been the victim of a smash and grab theft, to my knowledge, in probably five years.

Senator DECONCINI. Do you refine oil?

Mr. PYLES. No, sir, we do not.

Senator DECONCINI. You do not. Do oil companies that refine oil—will they just buy off any oil truck that pulls up on one day and says they want to sell their oil?

Mr. PYLES. Not typically, Senator.

Senator DECONCINI. Not typically?

Mr. PYLES. I assume you're wondering where they are selling this oil that is stolen?

Senator DECONCINI. Yes.

Mr. PYLES. The nature of the business is such that, over the years, in the life of a well, bottoms build up in a tank that are not pipeline grade or saleable crude oil directly to a refinery. As a result, an intermediate business has grown through the years called "reclaimers." These reclaimers spring up, allegedly for the purpose of salvaging what saleable hydrocarbons may exist in these tank bottoms, or oil that might be produced along with drilling mud during the drilling of a well.

With the exception of the State of Texas, they are virtually unregulated, unaudited, unaccountable to anyone for their purchases.

Senator DECONCINI. How does a company or an individual get the residue in the tank when there is quite a bit of it there? Do they contract with the producer to go in and clean the tank out? Is that what they do?

Mr. PYLES. In many instances yes, sir. Typically, what will happen is that the producer will contract with a trucking company to clean that bottom out and haul it away.

Senator DECONCINI. And then that is what they might sell in this secondary market, if you want to call it that?

Mr. PYLES. Exactly.

Senator DECONCINI. I see. Thank you.

How many companies does Apache have producing for them? How many——

Mr. PYLES. How many buying our oil?

Senator DECONCINI. Yes. How many?

Mr. PYLES. I don't know the exact number, Senator, but I would suspect upwards of 12 nationwide.

Senator DECONCINI. Is Koch the only one that you have found that there was a problem with the gauging and the——

Mr. PYLES. No, sir.

Senator DECONCINI. There were others?

Mr. PYLES. There has been one other case.

Senator DECONCINI. And what happened in that case? Was it referred to the FBI?

Mr. PYLES. No, sir, it was not. The magnitude of it was very small with regard to what is being discussed here today, and it was resolved with the purchaser.

Senator DECONCINI. Did you refer the Koch case to the FBI?

Mr. PYLES. No, sir, we did not.

Senator DECONCINI. Is there any reason for that?

Mr. PYLES. The evidence that we developed during our investigation did not indicate to our general counsel that there was criminal intent. Koch's senior management came forward and assured us that it was a localized issue. Based on those assurances, we resolved the matter in what we like was the best interest of our shareholders at that time.

Senator DECONCINI. What happened to the royalty participants? Do they get any of the settlement?

Mr. PYLES. Absolutely.

Senator DECONCINI. So if you have to pay 1/8 on the royalty of that $100,000, you would have paid that to the royalty recipients?

Mr. PYLES. Indeed.

Senator DECONCINI. Thank you very much, Mr. Pyles.

I have no further questions. Thank you very much for your participation. I want to thank you for being with us today and taking the time to travel out here and help us understand this problem.

Next we'll have a panel of Gene Poteet and James Spaulding. These are former employees of the Koch Industries.

[Witnesses sworn.]

Senator DECONCINI. Please be seated, gentlemen.

Mr. Sollers.

Mr. SOLLERS. Thank you, Mr. Chairman.

## STATEMENT OF GENE POTEET AND JAMES SPAULDING, FORMER EMPLOYEES (GAUGERS) KOCH INDUSTRIES

Mr. SOLLERS. Let's start with Mr. Poteet.

Welcome to Washington. Good afternoon.

Mr. POTEET. Good afternoon.

Mr. SOLLERS. Where do you live, sir?

Mr. POTEET. Portales, New Mexico.

Mr. SOLLERS. How are you employed?

Mr. POTEET. Currently I am a contract pumper.

Mr. SOLLERS. What does a contract pumper do?

Mr. POTEET. We take leases on a monthly basis and contract them for the month—look after their oil, sell it to gaugers.

Mr. SOLLERS. What is your experience in the oil patch as an oil gauger?

Mr. POTEET. I was in maintenance with Koch and then they made a pipeline gauger out of me and transferred me to New Mexico.

Mr. SOLLERS. When did you first begin to work for Koch? You're talking about Koch Oil?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. When did you first start working for them?
Mr. POTEET. In 1979. April or something like that, I believe.
Mr. SOLLERS. And you worked at what job at first?
Mr. POTEET. I was in maintenance.
Mr. SOLLERS. And then you moved to what job?
Mr. POTEET. I moved to the gauging position.
Mr. SOLLERS. And that is the actual measurement of oil?
Mr. POTEET. Yes, sir.
Mr. SOLLERS. Were you a truck driver or a pipeline gauger?
Mr. POTEET. Pipeline gauger.
Mr. SOLLERS. And pipeline gauger means you were gauging oil that was leaving the lease site and going into a pipeline; is that true?
Mr. POTEET. Yes, sir.
Mr. SOLLERS. As opposed to a gauger that measures oil that is going into a transport truck; is that right?
Mr. POTEET. Yes, sir.
Mr. SOLLERS. That's a truck driver gauger?
Mr. POTEET. Yes, sir.
Mr. SOLLERS. Now, have you given a prior statement with regard to the matters that you are here to testify about?
Mr. POTEET. Yes, sir, I have.
Mr. SOLLERS. And were you paid to give that statement?
Mr. POTEET. Yes. They told me it was for my time.
Mr. SOLLERS. How much money were you given?
Mr. POTEET. I was given $100.
Mr. SOLLERS. This relates to some civil litigation that is going on?
Mr. POTEET. Yes, sir.
Mr. SOLLERS. Did that payment in any way affect your testimony here today?
Mr. POTEET. No way.
Mr. SOLLERS. You understand you are sworn to tell the truth; is that true?
Mr. POTEET. Yes, sir. I wouldn't lie for them.
Mr. SOLLERS. Anybody tell you they'd give you anything for your testimony here today?
Mr. POTEET. No, sir.
Mr. SOLLERS. Now, you worked for what years with Koch?
Mr. POTEET. From 1979 to 1984.
Mr. SOLLERS. And then were you later brought on as a contract gauger for Koch?
Mr. POTEET. Yes, sir.
Mr. SOLLERS. For how long?
Mr. POTEET. Probably about three months.
Mr. SOLLERS. Was that in 1985?
Mr. POTEET. Yes, sir.
Mr. SOLLERS. The type of gauging you were doing with regard to a pipeline, was that metered or not?
Mr. POTEET. No, sir. We just worked the tanks and sent it down the pipeline.
Mr. SOLLERS. Now, when you were first brought on to gauge at Koch, or when you first moved to that position, did you receive pressure to gauge in a particular way?

Mr. POTEET. No, sir. I was just told to raise my temperature ten degrees. They said this would cover any shortages I might have. My boss wanted me to knock off quarters—below a half, raise it to a half inch in our favor.

Mr. SOLLERS. And that would always be raised in Koch's favor; is that true?

Mr. POTEET. Right.

Mr. SOLLERS. Who told you to do that?

Mr. POTEET. Dean Byford.

Mr. SOLLERS. What did you hear with regard to Koch gaugers elsewhere?

Mr. POTEET. What I kind of heard through the grapevine is the pumpers weren't too happy with them.

Mr. SOLLERS. And the pumpers are the people that are actually on the lease site—the producer representatives; is that true?

Mr. POTEET. Right.

Mr. SOLLERS. And what did you specifically hear?

Mr. POTEET. I heard that they were getting to them on their gauges. They were raising their temperature and the levels of their BS&W.

Mr. SOLLERS. By "they" you are talking about Koch gaugers; is that true?

Mr. POTEET. True.

Mr. SOLLERS. And when you say they were "getting to them," it means that they were using various methods, i.e. cutting the top gauge, bumping the bottom gauge, bumping the BS&W, and bumping the temperature; is that true?

Mr. POTEET. Right.

Mr. SOLLERS. How about gravity? Were you ever told to change the gravity of the oil?

Mr. POTEET. Yes, sir. I was told that if it was half or below to knock it down one point.

Mr. SOLLERS. And would that be to Koch's benefit?

Mr. POTEET. True. It really would.

Mr. SOLLERS. How about truck gaugers as opposed to pipeline gaugers at Koch?

Mr. POTEET. It seemed like the truckers were getting more oil than the pipeline gaugers. They did stuff that pipeline gaugers, as far as I knew, didn't do.

Mr. SOLLERS. Now, do you know whether or not other independent companies engaged in mismeasurement of oil?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. How do you know that?

Mr. POTEET. I had a nephew work for one, and they told him that if he couldn't steal his wages they didn't need him.

Mr. SOLLERS. Couldn't steal his wages they didn't need him. Was that another independent out in your area?

Mr. POTEET. Yes, sir. It is several hundred miles down the road south, but they run in our area, too.

Mr. SOLLERS. New Mexico and Texas?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. Where did you really work? What area?

Mr. POTEET. I worked in New Mexico.

Mr. SOLLERS. Did that include federal leases?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. Now, did there come a time that you quit Koch?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. Why did you quit?

Mr. POTEET. Well, I didn't agree with a lot of their practices, plus they had decided that they didn't need me gauging oil and were trying to get me to go into lack taking care of them.

Mr. SOLLERS. Does "lack" mean meters?

Mr. POTEET. Meters to measure with. We're talking about a 12-hour-a-day job, at least, and 8 hours pay. I just couldn't see that.

Mr. SOLLERS. You said you didn't agree with a lot of their practices. Does that include their gauging practices?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. By the way, who replaced you in your job?

Mr. POTEET. R.W. Rivas.

Mr. SOLLERS. R.W. Rivas. What was your next job?

Mr. POTEET. I went to work for Union Texas as a pumper.

Mr. SOLLERS. And as a pumper did you deal with Koch gaugers who were purchasing oil from Union leases?

Mr. POTEET. Yes, I did.

Mr. SOLLERS. And what was your experience?

Mr. POTEET. They would bump me on the top and bottom gauge and double my grind-outs—hit me sometimes 20 degrees temperature.

Mr. SOLLERS. And how would you know this, Mr. Poteet?

Mr. POTEET. Because at Union Texas our policy was that we worked the oil, we filled out a ticket just like the gauger. We back gauged and finished the ticket just like he did. There were lots of discrepancies on our tickets.

Mr. SOLLERS. A lot of discrepancies; is that correct?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. You actually had a back-gauging program in place where you would check the measurement by the Koch gaugers; is that true?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. Now, what about Mr. R.W. Rivas? Did you ever have a problem with him?

Mr. POTEET. I sure did. I talked to him and told him that if he didn't quit this I was going to turn it over to the company. In fact, I did say something to the company, and they told me to handle it the best way I could, and so I just got in a big argument with him and he quit doing it on my lease.

Mr. SOLLERS. What was Mr. R.W. Rivas doing on your lease?

Mr. POTEET. He was getting about 20 degrees temperature, about two inches of oil off of every tank, and doubling my grind-outs.

Mr. SOLLERS. Did it surprise you—because I think you were sitting right here—to hear Mr. Pyles' testimony concerning catching Mr. R.W. Rivas in Oklahoma?

Mr. POTEET. Not at all.

Mr. SOLLERS. Do you know where Mr. R.W. Rivas is now?

Mr. POTEET. Somewhere around Corpus Cristi.

Mr. SOLLERS. Is he still working for Koch?

Mr. POTEET. Yes, he is.

Mr. SOLLERS. And was Mr. R.W. Rivas moved from New Mexico because of the problem you had with him?

Mr. POTEET. That's true. He was moved because the other producers took the oil haul away from Koch.

Mr. SOLLERS. When you say the other producers took the oil away from Koch, does that mean that other producers cancelled Koch's contract to purchase their oil?

Mr. POTEET. That's right.

Mr. SOLLERS. And why was that?

Mr. POTEET. Because he was stealing oil.

Mr. SOLLERS. And Mr. Rivas then was moved to Oklahoma, and there he was caught by Apache, as you heard today; is that correct?

Mr. POTEET. That's right.

Mr. SOLLERS. And now he is in Corpus Cristi with Koch; is that true?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. Did you catch other truck drivers for Koch—driver/gaugers—stealing, as well?

Mr. POTEET. Yes. After this one lease with Union Texas they took it off the pipeline and truckers started to haul it, and I had quite a problem with them.

Mr. SOLLERS. And what did you do when you discovered them bumping the gauges and the temperature, etc.?

Mr. POTEET. I'd call the company and they'd just write me a correction for it.

Mr. SOLLERS. The company would write you a credit; is that true?

Mr. POTEET. That's true.

Mr. SOLLERS. Now, did you provide an unusual amount of oversight on your leases compared to pumpers at other leases?

Mr. POTEET. Yes, sir. There are very few pumpers that do this.

Mr. SOLLERS. A lot of leases, isn't it true, are really unattended and isolated?

Mr. POTEET. That's true.

Mr. SOLLERS. There are few checks and balances out in the field; is that correct?

Mr. POTEET. That's true.

Mr. SOLLERS. In your experience in back gauging behind Koch driver/gaugers, were they always long on their oil?

Mr. POTEET. Always.

Mr. SOLLERS. Meaning they always had more oil than they were actually paying for; is that correct?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. Now, have you had experience with the Bureau of Land Management?

Mr. POTEET. Yes, sir, I have.

Mr. SOLLERS. And in your experience, do they have the manpower and expertise to monitor oil theft?

Mr. POTEET. I think they do, but I think they need to re-organize. I just don't think they are really qualified to check oil like they should be.

Mr. SOLLERS. And, in your experience, are they equipped to catch sophisticated oil theft?

Mr. POTEET. I have seen one pick up that was equipped to catch a thief like this.

Mr. SOLLERS. Was that just on one occasion?

Mr. POTEET. Well, I saw him a couple of times, but I never did see him use it.

Mr. SOLLERS. On how many occasions have you seen a BLM inspector back-gauge?

Mr. POTEET. Never.

Mr. SOLLERS. What type of violations does the Bureau of Land Management write up?

Mr. POTEET. They just mostly go around looking for seals and trash—little oil spill, or something like that.

Mr. SOLLERS. Would BLM, as it is currently conducting its inspections, ever detect Koch-type mismeasurement?

Mr. POTEET. No, sir.

Mr. SOLLERS. Do you see oil mismeasurement in the field as a substantial problem?

Mr. POTEET. Yes, I do.

Mr. SOLLERS. What do you suggest this committee should do?

Mr. POTEET. I think they should take the BLM people and train them to check oil and know what to look for. Like with gravity, it will change with your temperature, but it will still basically be the same. They need to teach these people how to work this, and they can probably stop nine-tenths of this oil stealing.

Mr. SOLLERS. Where does most of the stealing occur?

Mr. POTEET. From gauging practices.

Mr. SOLLERS. The actual measurement practices by the purchasers?

Mr. POTEET. Yes, sir.

Mr. SOLLERS. That concludes my questions, Mr. Poteet.

Mr. Spaulding, I'd like to turn to you now.

Where do you live, sir?

Mr. SPAULDING. I live in Hobbs, New Mexico.

Mr. SOLLERS. How are you currently employed?

Mr. SPAULDING. I'm self employed now.

Mr. SOLLERS. Now, did you give a prior statement in this matter?

Mr. SPAULDING. Yes.

Mr. SOLLERS. And to whom did you give that statement?

Mr. SPAULDING. To Leonard Clark and an ex-government official.

Mr. SOLLERS. Is it your understanding that that is somehow related to private litigation that is ongoing?

Mr. SPAULDING. Yes.

Mr. SOLLERS. And it was in no way related to this committee; is that correct?

Mr. SPAULDING. No.

Mr. SOLLERS. Did you receive some money?

Mr. SPAULDING. Yes, I got $100 to compensate me for my time.

Mr. SOLLERS. And does the fact that you received that $100 in any way affect your testimony here today?

Mr. SPAULDING. No.

Mr. SOLLERS. You understand you are sworn to tell the truth; is that true?

Mr. SPAULDING. Yes.

Mr. SOLLERS. Now, you worked for Koch Industries?

Mr. SPAULDING. Yes.

Mr. SOLLERS. And when was that?

Mr. SPAULDING. From June of 1984 to January of 1988.

Mr. SOLLERS. Were you fired?

Mr. SPAULDING. Yes, for not working Sundays for them. We had an agreement when I went to work that I wouldn't work Sunday, so they came up in January of 1988 and said they were changing it and I was going to have to work a six-day and two-day shift, and I told them I wouldn't, and so they fired me.

Mr. SOLLERS. What was your job with Koch when you worked for them?

Mr. SPAULDING. I was a truck driver hauling crude oil, but I did gauge the tanks.

Mr. SOLLERS. So you were actually a trucker/gauger; is that right?

Mr. SPAULDING. Right.

Mr. SOLLERS. You measured the oil that you transported away in your truck?

Mr. SPAULDING. Right.

Mr. SOLLERS. Did your area involve federal and possibly Indian leases?

Mr. SPAULDING. Yes.

Mr. SOLLERS. Were you trained to gauge?

Mr. SPAULDING. Yes.

Mr. SOLLERS. By Koch?

Mr. SPAULDING. Yes.

Mr. SOLLERS. By whom?

Mr. SPAULDING. By Larry Cox, who was a superintendent at the time, and Ward Crouch, who was—I'm not sure whether he is chief gauger, assistant gauger, or just what his title is. And then there were two other gaugers that came around—well, I say two others, but there were four—that kept a pretty close tab on me because I wouldn't work the oil the way they wanted it worked.

Mr. SOLLERS. When you say that you wouldn't work the oil the way they wanted it to work, what do you mean?

Mr. SPAULDING. Well, like you've heard, they wanted me to add 10 to 15 degrees to the temperature and take off one quarter to three quarters of an inch to the gauge and add from one quarter to three quarters to the bottom gauge, and also to the grind-out. They wanted me to add to the grind-out.

Mr. SOLLERS. That's the BS&W content?

Mr. SPAULDING. Correct.

Mr. SOLLERS. And were other gaugers trained the same methods?

Mr. SPAULDING. Yes.

Mr. SOLLERS. Did you resist?

Mr. SPAULDING. Yes, I resisted.

Mr. SOLLERS. And what happened when you resisted gauging in this method?

Mr. SPAULDING. They would have gaugers that would go before me and work the tank, and also come behind me. Then, every once in a while, they would send me with one of their gaugers again to reteach me how to work it.

Mr. SOLLERS. And that would include all those methods you just described; is that true?

Mr. SPAULDING. Right.

Mr. SOLLERS. Did someone ever tell you there is no such thing as clean oil?

Mr. SPAULDING. Right. They would tell me that—Ernest Coin, who is a superintendent where I was at, told me that there was no such thing as anything below four-tenths of 1 percent, and that was when he first came to be the superintendent where I was working.

Mr. SOLLERS. That's BS&W content?

Mr. SPAULDING. Right.

Mr. SOLLERS. BS&W is deducted from the amount of oil that the purchaser has to pay the producer; is that right?

Mr. SPAULDING. Yes.

Mr. SOLLERS. Now, when you resisted these methods, did you have pressure put on you to start using them again?

Mr. SPAULDING. Yes. There was always pressure.

Mr. SOLLERS. Did you, in fact, at times cut the gauges and bump the BS&W and bump the temperature?

Mr. SPAULDING. Yes, I did.

Mr. SOLLERS. And why did you do that?

Mr. SPAULDING. Because they would put pressure on me. Talking about "they," I mean the gaugers, and also the superintendent would put pressure on me. I would think about it and consider it and roll it around in my mind and try to see it their way, and I might work it a while and do it the way they did it, but my conscience would start bothering me and I would quit working it that way and go back to working it the API way—the correct way.

Mr. SOLLERS. When you say your conscience was bothering you, did you believe that you were stealing oil?

Mr. SPAULDING. Yes.

Mr. SOLLERS. And did you have a problem with that?

Mr. SPAULDING. Yes.

Mr. SOLLERS. Now, how wide-spread was this practice?

Mr. SPAULDING. I don't know where all it went, but everyone that I ran into that gauged oil with Koch was the same way.

Mr. SOLLERS. And what area were you familiar?

Mr. SPAULDING. I was working in the southeastern part of New Mexico and the western part of Texas.

Mr. SOLLERS. Did you ever attend any gauger meetings?

Mr. SPAULDING. Yes.

Mr. SOLLERS. And what would happen at those gauge meetings?

Mr. SPAULDING. At the gauger meeting they would teach us the correct way to work to the API standards in case there was someone around watching, and they would teach that in the meeting. They would never tell you to work it the other way in the meeting, but on the leases and the unloading stations and places like that where you would meet up with them, then it would be discussed how they wanted you to work it.

Mr. SOLLERS. So at the actual meeting you would not hear the method of bumping the various measurements discussed; is that true?

Mr. SPAULDING. True.

Mr. SOLLERS. After the meeting, though, would there be discussion concerning those methods?

Mr. SPAULDING. Yes.

Mr. SOLLERS. And that would be at the various locations where gaugers would gather; is that true?

Mr. SPAULDING. Well, at our unloading stations a lot of the time we would discuss this.

Mr. SOLLERS. What were you told to do if an operator was actually present on the lease?

Mr. SPAULDING. To work it and call it what it was.

Mr. SOLLERS. As opposed to using those various methods?

Mr. SPAULDING. Yes. They said that if they weren't watching or there to work it the other way and to get what you could if they didn't pay attention to the lease.

Mr. SOLLERS. And, as you have already testified, the company followed you to check and make sure that you were using the methods that they had asked you to use; is that true?

Mr. SPAULDING. Yes.

Mr. SOLLERS. Were you always long on your oil?

Mr. SPAULDING. I feel like I was.

Mr. SOLLERS. Were you always told that you were short on your oil?

Mr. SPAULDING. You'd hear all the time from the gaugers that we were short.

Mr. SOLLERS. The gaugers meaning the individuals that were checking up on you from the company?

Mr. SPAULDING. I guess. Like at the unloading stations—we had five or six unloading stations, and that would be metered that would go through into the pipeline. They would tell us that we come up short all the time.

Mr. SOLLERS. Now, was the oil that you are unloading from your truck actually measured to show whether or not you, individually, were short on your oil?

Mr. SPAULDING. No.

Mr. SOLLERS. Could that have been done?

Mr. SPAULDING. Yes, it could have been done.

Mr. SOLLERS. But, nevertheless, you were always told that you were short and pressure was put on you to be long; is that true? Or at least not to be short?

Mr. SPAULDING. That's true.

Mr. SOLLERS. Did other gaugers tell you how much oil they were taking?

Mr. SPAULDING. Yes, at times they would.

Mr. SOLLERS. And what did they tell you?

Mr. SPAULDING. I have heard some of them say as high as three to four inches on the load of oil.

Mr. SOLLERS. That they were cutting off the top gauge?

Mr. SPAULDING. Yes.

Mr. SOLLERS. Are some of those gaugers still working for Koch?

Mr. SPAULDING. Yes.

Mr. SOLLERS. And, as you testified, you were uncomfortable with this method of gauging; is that true?

Mr. SPAULDING. That's true.

Mr. SOLLERS. Mr. Chairman, I have no further questions of either of these witnesses.

Thank you, Mr. Spaulding.

Senator DECONCINI. Mr. Spaulding, when you talk about pressure, obviously when you drive up with a load of oil and they tell you it is short and you know they haven't measured it, that's pressure. What other kinds of pressure would they put on you?

Mr. SPAULDING. Sometimes they would be sitting there at the unloading station and take the thief, which was explained earlier, and work your tank of oil and see what you had done.

Like I said, I have had them follow me out to the lease. I have seen them, and recognized who it was.

Senator DECONCINI. After you had left, you mean?

Mr. SPAULDING. No. While I was there. I'd see them.

Senator DECONCINI. You'd see them?

Mr. SPAULDING. Yes. And then at times they would go to the lease before I ever got there. And then at times they would come after I left.

Senator DECONCINI. And, of course, the innuendo or message there is that they are checking it and you're not meeting what they measured?

Mr. SPAULDING. Right.

Senator DECONCINI. So you had to bump it up to meet what they measured?

Mr. SPAULDING. Right.

Senator DECONCINI. Have you ever worked for any other company in that capacity?

Mr. SPAULDING. No.

Senator DECONCINI. When you talked to these gaugers that worked for Koch and yourself, was there an incentive to do this where you're going to get a raise or a bonus, or just keep your job?

Mr. SPAULDING. It's mostly just keep your job.

Senator DECONCINI. Was your job actually threatened if you did not come up long, or at least continued to come up short?

Mr. SPAULDING. I felt that it was.

Senator DECONCINI. You felt that it was?

Mr. SPAULDING. Yes.

Senator DECONCINI. And how about you, Mr. Poteet? Did you feel the same way when you were involved in this area? You said somebody was bold enough to say, "Steal enough for your wages," right?

Mr. POTEET. Yes, sir.

Senator DECONCINI. What other pressure was put on the gaugers? Can you explain that to us?

Mr. POTEET. They just came up all the time and said you were short and you've got to do a little bit better this month. They said stuff like that all the time.

Senator DECONCINI. All the time. And the inference was that you might lose your job if you continued to do that?

Mr. POTEET. They didn't come out and say it, but they kind of left that impression.

Senator DECONCINI. And did you ever report any of this to authorities?

Mr. POTEET. No, sir.

Senator DECONCINI. Do you know of any cases of any investigations conducted by the BLM in this area?

Mr. POTEET. No, sir, I sure don't.

Senator DECONCINI. Or the FBI?

Mr. POTEET. No, sir.

Senator DECONCINI. Are either one of you familiar with the smash and grab techniques of theft that have been talked about here? Have you ever seen or heard of one?

Mr. SPAULDING. I've never seen one.

Mr. POTEET. I've never seen it.

Senator DECONCINI. Never seen anyone steal a whole tank full of oil?

Mr. POTEET. I've seen it happen before.

Senator DECONCINI. You have seen it happen?

Mr. POTEET. Yes, sir.

Senator DECONCINI. Where do they sell that? Is that what Mr. Pyles was talking about before?

Mr. POTEET. The only way that I can figure out something like that, they had to have a well somewhere. They had to have a lease.

Senator DECONCINI. So that they could run it through?

Mr. POTEET. Yes.

Senator DECONCINI. Thank you.

I want to thank you gentlemen for coming forward today and being a part of this investigation. We appreciate your taking the time that you have taken today to give us your testimony.

We have no further questions. Thank you, gentlemen.

Our last witnesses today will be Thurmon and Arnita Parton.

[Witnesses sworn.]

Senator DECONCINI. Please be seated.

## STATEMENT OF THURMON PARTON AND ARNITA PARTON GONZALEZ, INDIAN VICTIMS OF OIL THEFT, GRACEMONT, OK

Senator DECONCINI. We want to thank you for being with us today. Mr. Sollers will conduct the inquiry.

Mr. SOLLERS. Please state your full names for the record.

Mr. PARTON. Thurmon Parton.

Ms. GONZALEZ. Arnita Parton Gonzalez.

Mr. SOLLERS. And you are brother and sister; is that true?

Ms. GONZALEZ. Yes.

Mr. PARTON. That's right.

Mr. SOLLERS. I'd like to welcome you to Washington. Thank you for coming in.

Where do you live?

Mr. PARTON. I live in Binger, Oklahoma.

Ms. GONZALEZ. And I live at Gracemont, Oklahoma.

Mr. SOLLERS. They're how far apart?

Mr. PARTON. About a mile.

Mr. SOLLERS. Now, are you all members of a federally-recognized tribe?

Mr. PARTON. Yes, we are.

Mr. SOLLERS. And were your parents also a member of a federally-recognized tribe?

Ms. GONZALEZ. Yes.

Mr. SOLLERS. What tribe is that?

Ms. GONZALEZ. Caddo.

Mr. SOLLERS. Caddo?

Ms. GONZALEZ. Caddo. Yes.

Mr. SOLLERS. Can you please spell that for the record.
Ms. GONZALEZ. C-A-D-D-O.
Mr. SOLLERS. Now, was your mother an allottee?
Mr. PARTON. Yes, she was.
Mr. SOLLERS. I'll address my questions now to Mr. Parton so we don't get all mixed up here, and then we'll alternate back and forth.
Was she one of many, many allottees in Oklahoma, Mr. Parton?
Mr. PARTON. Yes.
Mr. SOLLERS. And did you and your sister, Ms. Gonzalez, inherit her interest?
Mr. PARTON. That's right.
Mr. SOLLERS. And, as an allottee, do the both of you have an interest in two oil leases in Oklahoma?
Mr. PARTON. Yes, we do.
Mr. SOLLERS. And on one of those leases are there two wells?
Mr. PARTON. Yes.
Mr. SOLLERS. So, in fact, you are receiving royalties from three wells in Oklahoma; is that true?
Mr. PARTON. That's true.
Mr. SOLLERS. Now, is it fairly confusing in trying to figure out where your royalties come from and what the actual source is?
Mr. PARTON. Yes, it is.
Mr. SOLLERS. Have you at times received anywhere from one check a month to ten checks a month?
Mr. PARTON. Yes.
Mr. SOLLERS. And that check comes from where?
Mr. PARTON. It comes from the BIA office.
Mr. SOLLERS. The Bureau of Indian Affairs office?
Mr. PARTON. That's right.
Mr. SOLLERS. And where is that office?
Mr. PARTON. That's in Anadarko, Oklahoma.
Mr. SOLLERS. And your share in the royalty interest of those wells is but a fraction of the Native American interest in those wells; is that true?
Mr. PARTON. Yes.
Mr. SOLLERS. In other words, there are other Indian allottees on those wells?
Mr. PARTON. Yes, there are. My aunt and my uncle are on it with us.
Mr. SOLLERS. And you two each receive a check from the BIA every month; is that correct?
Mr. PARTON. That's correct.
Mr. SOLLERS. Are your wells in the Binger field in Oklahoma?
Mr. PARTON. Yes, they are.
Mr. SOLLERS. Now, as of January of 1987, can you give an average of your royalty payments that you were receiving on a monthly basis?
Mr. PARTON. In 1987 we were drawing approximately $3,000 a month, and then it dropped down to about $1,000.
Mr. SOLLERS. Is it down to about $1,000 now?
Mr. PARTON. Yes, sir.
Mr. SOLLERS. Is that the same for the two of you?

Mr. PARTON. Yes. That's what I receive and that's what she receives. She receives the same amount I do.

Mr. SOLLERS. Back when you were receiving $3,000 in January of 1987, was that for each of you?

Mr. PARTON. Yes.

Mr. SOLLERS. Or is that split?

Mr. PARTON. It's $3,000 apiece.

Mr. SOLLERS. And now are you each receiving approximately $1,000 a month?

Mr. PARTON. Yes. Probably about $1,100, or somewhere in that neighborhood.

Mr. SOLLERS. Per month?

Mr. PARTON. Yes, sir.

Mr. SOLLERS. Has that decline in the royalty payments hurt you?

Mr. PARTON. Yes.

Mr. SOLLERS. Do you have any idea why that decline has taken place over the last two years?

Mr. PARTON. I have no idea.

Mr. SOLLERS. Are you aware of what has happened to the price of oil?

Mr. PARTON. Yes, sir.

Mr. SOLLERS. And what has happened to it?

Mr. PARTON. It seems to me like the prices are going up, but we haven't seen any improvements on our checks.

Mr. SOLLERS. Now, do you depend on that money? It may sound like pretty stupid question, but do you depend on that money every month?

Mr. PARTON. Yes, sir.

Mr. SOLLERS. What is the employment situation in Oklahoma where you are?

Mr. PARTON. It's pretty bad right now.

Mr. SOLLERS. Are you employed?

Mr. PARTON. No, I'm not.

Mr. SOLLERS. Ms. Gonzalez, are you employed?

Ms. GONZALEZ. No, I'm not.

Mr. SOLLERS. But you are unaware as to why those royalty checks have declined as they have over the last couple of years; is that true?

Mr. PARTON. Yes.

Mr. SOLLERS. Now, Mr. Parton, have you recently been made aware that the Special Committee investigators caught a Koch oil gauger stealing oil from your lease?

Mr. PARTON. No, sir.

Mr. SOLLERS. Were you just told that before you came down here earlier today?

Mr. PARTON. Yes, sir.

Mr. SOLLERS. Were you also just told that a Koch oil gauger was caught fabricating run documents—the actual documents which are left by a gauger to indicate how much oil he has purchased?

Mr. PARTON. Yes.

Mr. SOLLERS. Were you also told that surveillance and investigation found that on one run a Koch oil gauger took seven barrels, on another run a Koch oil gauger took seven barrels, and on a third

run a Koch oil gauger took five barrels? Were you just informed of that?

Mr. PARTON. Yes, sir.

Mr. SOLLERS. How do you feel about that?

Mr. PARTON. I think it is wrong. I don't think it is fair.

Mr. SOLLERS. Ms. Gonzalez, how do you feel about that?

Ms. GONZALEZ. I think it is wrong, too.

Mr. SOLLERS. Mr. Chairman, that concludes my questions.

Senator DECONCINI. Mr. Parton, when you saw the decline from 1987 of $3,000 a month to $1,000 a month did you make an inquiry to the BIA or anyone?

Mr. PARTON. No. My sister went down to the agency to question them about that.

Senator DECONCINI. The BIA?

Mr. PARTON. Yes, sir.

Senator DECONCINI. And what kind of answer did you get?

Mr. PARTON. She'll have to answer that question. She went down there. I was gone at the time.

Senator DECONCINI. Oh, your sister went down. Ms. Gonzalez, what did you do?

Ms. GONZALEZ. I asked them about what happened to our checks because it had gone down, and they never did give me the right answer.

Senator DECONCINI. What answer did they give you?

Ms. GONZALEZ. That it was the oil company.

Senator DECONCINI. The oil company's fault?

Ms. GONZALEZ. Hadn't paid in.

Senator DECONCINI. Hadn't paid it?

Ms. GONZALEZ. Yes.

Senator DECONCINI. Did you ask them to check into it at all?

Ms. GONZALEZ. Yes, I did.

Senator DECONCINI. And what did they say?

Ms. GONZALEZ. They said they would.

Senator DECONCINI. And did you hear back again?

Ms. GONZALEZ. No.

Senator DECONCINI. Have you ever seen the original royalty agreement entered into by the BIA on behalf of your mother?

Ms. GONZALEZ. No.

Senator DECONCINI. You never have seen it?

Ms. GONZALEZ. No.

Senator DECONCINI. Have you asked for it?

Ms. GONZALEZ. Yes.

Senator DECONCINI. You have asked for it, Ms. Gonzalez?

Ms. GONZALEZ. But they just won't give them to you.

Senator DECONCINI. They won't give it to you?

Ms. GONZALEZ. No.

Senator DECONCINI. Have you consulted lawyers?

Ms. GONZALEZ. No.

Senator DECONCINI. There are four of you that receive from these three wells?

Mr. PARTON. Yes.

Senator DECONCINI. Your aunt and uncle and the two of you?

Mr. PARTON. My aunt and my uncle, but my uncle passed away,

Senator DECONCINI. She gets his share?
Mr. PARTON. My aunt.
Senator DECONCINI. So there are three of you?
Mr. PARTON. My cousin, and my sister and I.
Senator DECONCINI. Then there are four of you?
Mr. PARTON. There are still four. Yes.
Senator DECONCINI. There are four of you now, and you all receive the same from each of the three wells; is that correct?
Mr. PARTON. No. They do.
Senator DECONCINI. They do?
Mr. PARTON. The three are the original owners, and we have just come in on my mother's share. We cut that in half. We get half of what my mother had.
Senator DECONCINI. I see. But there are four recipients now, is that right?
Mr. PARTON. Yes.
Senator DECONCINI. And do they all receive the same amount?
Mr. PARTON. I never did ask them.
Senator DECONCINI. You don't know what they receive?
Mr. PARTON. I couldn't tell you for sure.
Senator DECONCINI. Have you talked to them about the diminution of the amount?
Mr. PARTON. Yes.
Senator DECONCINI. And did they receive a less amount, also?
Mr. PARTON. They said they receive less, too.
Senator DECONCINI. And did they tell you what they had done, if anything?
Mr. PARTON. They never did mention it to me.
Senator DECONCINI. Do you know other people who are allottees who have royalty payments made to them?
Mr. PARTON. My sister.
Senator DECONCINI. Besides these people here.
Mr. PARTON. She went to a meeting the other day, and she might tell you something about that. I didn't go.
Senator DECONCINI. Ms. Gonzalez, do you know of other people who were supposed to or who do receive royalty payments?
Ms. GONZALEZ. Yes. There are quite a few of them in Oklahoma that don't get the right amount of money.
Senator DECONCINI. And you know those people and they tell you they don't get the right amount of money?
Ms. GONZALEZ. Yes.
Senator DECONCINI. And how do they know that? Is it just because it is less than what it was?
Ms. GONZALEZ. Yes.
Senator DECONCINI. And did they indicate that they have done anything about it?
Ms. GONZALEZ. Well, some of them write to their Congressmen and the oil companies and everything.
Senator DECONCINI. Now, the check that you get comes from the U.S. Government?
Ms. GONZALEZ. Yes.
Senator DECONCINI. And it comes in a BIA envelope, or something like that?
Ms. GONZALEZ. Yes.

Senator DECONCINI. From the BIA?

Ms. GONZALEZ. Yes.

Senator DECONCINI. Do you ever see any accounting? Do they give you any accounting at the end of the year?

Mr. PARTON. They give us a voucher about once a month that is a month late.

Senator DECONCINI. That comes with the check?

Mr. PARTON. It comes about a month later after we receive this check. This month they'll send it for last month.

Senator DECONCINI. And what does the voucher show?

Mr. PARTON. It shows what the oil company has paid into the Indian agency, and then, in turn, they pay us after they divide it up.

Senator DECONCINI. It shows the total amount paid by the company?

Mr. PARTON. Yes.

Senator DECONCINI. In dollars?

Mr. PARTON. Yes.

Senator DECONCINI. Does it indicate the amount of oil? Do you remember?

Mr. PARTON. I believe it does, yes.

Senator DECONCINI. Do you have one here?

Mr. PARTON. I have one here.

Senator DECONCINI. May I see it please?

Mr. PARTON. Yes, sir.

Senator DECONCINI. From these vouchers, Mr. Parton, what do you make of all this? Do you have any idea?

Mr. PARTON. I have no idea how to read this. My sister went down to the meeting one day and they were explaining how to read this, but I wasn't here. Like I said, I've been out to California. I just came home three or four days ago.

Senator DECONCINI. Ms. Gonzalez, you received something similar to this?

Ms. GONZALEZ. Yes.

Mr. PARTON. She gets one like this also.

Senator DECONCINI. Do you understand it? Do you know what it is all about? I certainly don't.

Ms. GONZALEZ. I do on some of this.

Senator DECONCINI. Do you?

Ms. GONZALEZ. Yes.

Mr. PARTON. What I couldn't figure out, on one of these last month on the bottom it says the total. It had nothing on there, but they sent it to me anyway.

Senator DECONCINI. And the bottom amount where it says "check total," that's the check that was sent to you the previous month; is that right?

Ms. GONZALEZ. Yes.

Mr. PARTON. Right.

Senator DECONCINI. Thank you. I'll give this back to you.

I have no further questions.

Mr. Ballen?

Mr. BALLEN. Just for the record, Mr. Parton and Ms. Gonzalez, did you give permission to committee investigators to conduct their surveillance on your leases several months ago?

Ms. GONZALEZ. Yes.

Mr. BALLEN. Thank you.

Senator DECONCINI. I want to thank you for cooperating in this investigation, Mr. Parton and Ms. Gonzalez. Before I excuse you I'll ask the Senator from Oklahoma if he cares to make any comments.

We have two of your fine constituents here today.

Senator NICKLES. Mr. Chairman, thank you very much.

To the Partons, thank you. I apologize. I wanted to try to catch the beginning of your statement.

I'm assuming by your comments that you are concluding; is that correct?

Senator DECONCINI. That's correct.

Senator NICKLES. To the Partons, did you have a written statement, or was it just an oral statement?

Ms. GONZALEZ. Just oral.

Senator NICKLES. Just an oral statement?

Mr. PARTON. Yes.

Senator NICKLES. But the essence of it was that you have not been paid a fair amount for the amount of oil that was taken off your land; is that correct?

Ms. GONZALEZ. Yes.

Senator NICKLES. And that underpayment amounted to about how much per month?

Mr. PARTON. Probably about $2,000. It started out at $3,000, and it dropped down to about $1,000 for the last three years or so.

Senator NICKLES. You're talking about the royalty payment?

Mr. PARTON. Yes, sir.

Senator NICKLES. Does that fluctuate with the price of oil? The price of oil has been a lot less. You said three years ago you might have been looking at $18 or $19 oil, and then a year ago it was $13, and now it is back up into the $18 range.

Mr. PARTON. Yes.

Senator NICKLES. Were the payments underpaid because they were underestimating or understating the amount of oil that was taken off your land?

Mr. PARTON. That's what we don't know. We're trying to figure out now why everything went down and why we're getting less for the last three or four years.

Senator NICKLES. Well, some of that was from price, but you think it is more than just from the price decline; is that correct?

Mr. PARTON. Yes.

Senator NICKLES. A significant percentage of it would be from the price decline, but can you tell from your royalty checks what volume of oil is included?

Mr. PARTON. I couldn't tell from mine.

Senator NICKLES. You just receive a check and——

Mr. PARTON. That's it.

Senator NICKLES [continuing]. That is so much per month? It doesn't have a statement on the amount of oil that is produced?

Mr. PARTON. No, it doesn't.

Senator NICKLES. So it is hard for you to know where or how come there are differences involved. That $3,000 is now $1,000. Is that per person?

Ms. GONZALEZ. Yes.

Mr. PARTON. Right.

Senator NICKLES. And would that apply to many members of the Caddo Tribe?

Mr. PARTON. I imagine the rest of them are in the same boat. Yes.

Senator NICKLES. How many people would that include?

Mr. PARTON. The ones that have oil in our county?

Senator NICKLES. Yes. Is that on a per member basis in the Tribe? It's not that extensive is it?

Mr. PARTON. No.

Ms. GONZALEZ. No.

Mr. PARTON. Other people have been having problems with their oil money also, but they are like us. We didn't know how to check into it or who to see or what could be done about it.

Senator NICKLES. Did you notify the BIA and Anadarko of some irregularities as far as this was concerned?

Mr. PARTON. Yes. All they say is that the oil companies haven't paid them yet. We were wondering why we hadn't received our checks on a certain date, and they said the oil company hasn't paid in yet. When they do come in, we don't have anything to go by. We just take their word for it.

Senator NICKLES. Do they ever check meters or anything as far as the amount of oil that was being produced on the land?

Mr. PARTON. Not that I know of.

Senator NICKLES. Thank you very much.

Mr. Chairman, thank you for allowing me to ask them a couple of questions.

Senator DECONCINI. Thank you, Senator. We're glad to have you here, and we'll be glad to supply you with the questions that Mr. Sollers did ask Mr. Parton and Ms. Gonzalez regarding this situation. It is a tragic incident of no answers for people's income that has been cut in two thirds in about two years.

Mr. Sollers has an important question I think he wants to get on the record.

Mr. SOLLERS. Mr. Parton were you aware that Koch Oil came in as the oil purchaser in the Binger Field in early 1987?

Mr. PARTON. No, sir, I wasn't.

Mr. SOLLERS. You don't know why your royalties declined, correct?

Mr. PARTON. No.

Mr. SOLLERS. But on your documents, do you see Koch Oil listed as a purchaser of the oil?

Mr. PARTON. Yes, sir.

Mr. SOLLERS. And has that name just appeared over the last couple of years?

Mr. PARTON. Yes, sir.

Senator DECONCINI. Who was on it before? Do you remember?

Mr. PARTON. Phillips.

Senator DECONCINI. Phillips was there before?

Mr. PARTON. Yes, sir.

Senator DECONCINI. Any further questions?

Mr. SOLLERS. No. Thank you, Mr. Chairman.

Thank you very much, Mr. Parton and Ms. Gonzalez.

Senator DECONCINI. Thank you for being with us today. We appreciate it. You were very helpful.

The Special Committee will stand in recess until 10 a.m. tomorrow morning.

[Whereupon, at 4:17 p.m., the committee was recessed, to reconvene at 10 a.m. on Wednesday, May 10, 1989.]

# APPENDIX

## Additional Material Submitted for the Record

### LARGEST OKLAHOMA PURCHASERS OF CRUDE OIL

| | | OKLAHOMA-WIDE | | COMPANY-WIDE | |
|---|---|---|---|---|---|
| | | Barrels over/short(-)* | Value** | Barrels over/short(-) | Value |
| Koch | '86 | 240,680 | $3,631,726 | 803,874 | $12,171,215 |
| | '87 | 239,206 | $4,275,930 | 671,144 | $11,900,860 |
| | '88 | 142,422 | $2,191,177 | 474,281 | $7,110,355 |
| Sun | '86 | N/A | N/A | N/A | N/A |
| | '87 | - 11,711 | - $207,888 | - 13,997 | - $247,986 |
| | '88 | - 6,709 | - $83,691 | - 13,899 | - $188,056 |
| Conoco | '86 | 351 | $3,014 | - 1,927 | - $4,030 |
| | '87 | - 386 | $2,799 | - 3,621 | $45,345 |
| | '88 | 375 | $12,015 | 12,165 | $204,722 |
| Kerr-McGee | '86 | - 4,941 | - $70,828 | - 5,885 | - $89,099 |
| | '87 | - 9,564 | - $172,501 | - 9,580 | -$174,739 |
| | '88 | - 19,796 | - $311,781 | - 23,586 | - $369,593 |
| Phil-lips | '86 | 908 | $13,747 | 10,051 | $152,172 |
| | '87 | 2,181 | $38,669 | 11,468 | $203,328 |
| | '88 | - 456 | - $6,835 | - 722 | - $10,823 |

* All barrel figures were provided by the companies themselves. A positive number connotes an overage; a negative number means that the company was "short".

** Dollar over/short figures were supplied to the Special Committee Sun (who submitted their dollar figures late; chart now amended), Conoco, Kerr-McGee, and Koch. For Phillips (and originally Sun), the Committee used Koch's value figures since they were very close to industry averages and, according to Phillips, would be representative value figures for its product, since Koch is the largest purchaser of crude oil in Oklahoma.

(713) 457-6003 **TUCKER & ASSOCIATES** (713) 932-4458

P.O. Box 1176
Channelview, Texas 77530

Consultants For the Petroleum Industry

November 23, 1988

The attached report shows the results of our backgauging operation following standard API/ASTM guidelines on the Linmar Petroleum Company leases in Duchesene County, Utah from September 6, 1988 to October 20, 1988.

In comparing the individual items that we checked during this operation, we found discrepancies on 38 out of 48 items reported by Koch Industries, Inc. amounting to a total shortage of 1.0% of crude oil.

VOLUME SUMMARY

| | |
|---|---|
| Observer's Total N.S.V.: | 1328.67 |
| Purchaser's Total N.S.V.: | 1315.56 |
| Number of Barrels Difference: | 13.11 |
| Average Volume Difference: | 1.00% |

| | Average | Range |
|---|---|---|
| Inches Difference: | 1-1/4" | 1/4" to 2-1/4" |
| Degrees Difference: | 14 degrees | 0 to 35 degrees |
| Percent S&W Shorted: | 0.05% | 0.01% to 0.07% |
| Water Difference: | 0 | N/A |
| API Difference: | 1.3 | 0.3 to 2.0 |

GAUGING ANALYSIS

| A | Observ. N.S.V. | Purch. N.S.V. | Diff. % | Total Gauge Diff. | Water Diff. | API Diff. | Temp. Diff. Open | Temp. Diff. Close | S&W Diff. % |
|---|---|---|---|---|---|---|---|---|---|
| 001 | 233.91 | 234.53 | <0.27> | 3" | N/D | 0.3 | 0 | 3 | 0.07 |
| 002 | 233.64 | 232.52 | 0.48 | 3/8" | N/D | 2.0 | 3 | 29 | 0.06 |
| 003 | 205.01 | 200.85 | 2.07 | 7/8" | N/D | 1.2 | 19 | 9 | 0.06 |
| 004 | 192.41 | 193.12 | <0.37> | 1/4" | N/D | 1.5 | 8 | 20 | 0.06 |
| 005 | 254.86 | 247.29 | 3.06 | 2-1/4" | N/D | 0.6 | 16 | 20 | 0.05 |
| 006 | 208.84 | 207.25 | 0.77 | 1/2" | N/D | 2.0 | 1 | 35 | 0 01 |

N/D = No difference.

GAS RECORDER ANALYSIS

n October 20, 1988, we witnessed the checking of the calibration of ten Barton recorders owned and maintained by Koch Industries located on Linmar's leases. The testing was conducted by Jim Jurgens of Measurement Services. Rudolph Wurstheim from Koch Industries was in attendance.

Each recorder was checked for a minimum of the following:

1. Pen Arc.
2. Time Lag.
3. Differential.
4. Static Pressure.
5. Temperature.

Recorders labeled as ".... Sales to Koch" are Linmar Petroleum selling raw gas to Koch Industries. Recorders labeled ".... Fuel Gas" are Koch Industries selling processed gas to Linmar Petroleum for use in their heater/treaters.

The report from Mr. Jurgens of Measurement Services follows:

**Measurement Services**
STAR ROUTE 1, BOX 14
BELFIELD, ND 58622
PHONE (701) 575-4649

November 21, 1988

Tucker & Associates
Chris Tucker
P.O. Box 1176
Channelview, Texas 77530

Dear Mr. Tucker,

Thank you for your recent inquiry concerning the amount of error found in the calibration check of the ten meters in Utah on October 20, 1988. We found that each of the ten meters was out of calibration. The information following shows 160 inaccuracies out of 202 items checked. (79% incorrect).

| | Error Range of Chart Readings (at points checked) |
|---|---|
| **Ford 2-13-C7 Sales to Koch** | |
| Differential reading: | 0.8% understatement to 1% overstatement |
| Static reading: | 1.5% to 2% overstatement |
| Temperature reading: | 5.9% to 8.3% overstatement |
| **Ford 2-13-C7 Fuel Gas** | |
| Differential reading: | 0.4% understatement to 0.2% overstatement |
| Static reading: | 0 to 1% overstatement |
| Temperature reading: | 5.4% to 7% overstatement |
| **Ute Tribal 2-19-C6 Sales to Koch** | |
| Differential reading: | 1% understatement to 0.6% overstatement |
| Static reading: | 0 to 1% overstatement |
| Temperature reading: | 0.7% to 2.1% overstatement |
| **Ute Tribal 2-19-C6 Fuel Gas** | |
| Differential reading: | 0 to 1% overstatement |
| Static reading: | 0 to 1% overstatement |
| Temperature reading: | 1.4% to 2.5% overstatement |
| **Ute Tribal 2-24-C7 Sales to Koch** | |
| Differential reading: | 0 to 0.5% overstatement |
| Static reading: | 0.7% to 5% overstatement |
| Temperature reading: | 7.6% overstatement to 16.9% understatement* |
| **Ute Tribal 2-24-C7 Fuel Gas** | |
| Differential reading: | 0.5% understatement to 0.6% overstatement |
| Static reading: | 0 to 1% overstatement |
| Temperature reading: | 0.5% understatement to 1.1% overstatement |

* understatement error is the result of a bad meter part restricting movement of the pen arm at [illegible]

**Measurement Services**
STAR ROUTE 1, BOX 14
BELFIELD, ND 58622
PHONE (701) 575-4649



Ute Tribal 2-21-C7 Sales to Koch

| | |
|---|---|
| Differential reading: | 0.3% understatement to 3% overstatement |
| Static reading: | 0 to 1% overstatement |
| Temperature reading: | 9.3% to 11.7% overstatement |

Ute Tribal 2-21-C7 Fuel Gas

| | |
|---|---|
| Differential reading: | 0 to 0.6% understatement |
| Static reading: | 0 to 0.8% overstatement |
| Temperature reading: | 12.3% to 14.5% overstatement |

Ute Fee 2-33-C6 Sales to Koch

| | |
|---|---|
| Differential reading: | 0 to 0.7% understatement |
| Static reading: | 0 to 0.8% understatement |
| Temperature reading: | 5.7% to 5.8% overstatement |

Ute Fee 2-33-C6 Fuel Gas

| | |
|---|---|
| Differential reading: | 0.7% understatement to 1% overstatement |
| Static reading: | 0 to 6% overstatement |
| Temperature reading: | 9.7% to 13.2% overstatement |

To utilize the above information properly, the percentages of error(overstatement and understatement) should be applied to the individual locations in conjunction with the integration of charts for those locations. These charts are the property of Koch Industries and are not available to us. To base an opinion as to importance of an error based on percentage alone would be ill advised, since the volume being dealt with on a particular location would more correctly determine the magnitude of the error.

If we can be of any further assistance in this matter, please let me know.

Sincerely,

James C. Jurgens

James C. Jurgens

cc: W.J. Miller

The schedule of events was as follows:

1. As per instructions, on September 1, 1988 I met with Chuck Norman in Denver, Colorado. Together we met with Bob Lewis of Linmar Petroleum Company regarding Linmar's leases in northwestern Utah where Koch Industries was gauging and hauling the crude oil.

2. On September 2, 1988 I traveled to Roosevelt, Utah and met with Ed Whicker of Linmar Petroleum concerning the above mentioned leases. Together we physically visited the sites and discussed operational details.

3. On September 6, 1988, my associate, Ramie Rushing and I traveled to northwestern Utah and began the backgauging operation on September 7, 1988.

4. On October 12, 1988 we returned to Houston having concluded the oil measurement part of the study.

5. On October 19, 1988 we traveled to northwestern Utah and witnessed the checking of the gas recorders on October 20, 1988.

6. On October 21, 1988 we returned to Houston concluding the field portion of this study.

Note: These leases had low production volumes. The time between each movement was utilized in monitoring the leases and production inventories.

The single most important factor during this operation was that no one discovered our study. Therefore we had to avoid:

1. Koch's truck drivers, gaugers and field personnel.

2. Linmar's pumpers and field personnel.

3. Other oil companies' field personnel.

4. The landowners, farmers or ranchers.

5. Any other person who would question our presence.

We do not feel that Koch became aware of our presence due to our operations and we tried to avoid patterns and routines as much as possible.

This report is as concise as possible without becoming too technical. If you should have any questions, please feel free to contact anytime at (713) 457-6003.

Thank You,

Christopher Tucker

(713) 457-6003 **TUCKER & ASSOCIATES** (713) 932-4458

P.O. Box 1176
Channelview, Texas 77530

Consultants For the Petroleum Industry

## REPORT ON BACKGAUGING OPERATION

The attached report shows the results of our backgauging operation following standard API/ASTM guidelines of the Mull Drilling, Inc. leases in Eastern Colorado during May 22-31, 1988.

In comparing the indiviual items that we checked during this operation, we found discrepanices on 96 out of 110 items reported by Koch Industries, Inc..

A summary of the attached information is as follows:

### SUMMARY OF COMPLETE GAUGES

Observer's Total N.S.V.: 2195.94 barrels

Purchaser's Total N.S.V.: 2178.26 barrels

Number of Barrels Shorted: 17.7 barrels

Average Percent Shorted: 0.81 percent

| | Average | Range |
|---|---|---|
| Inches Difference: | 7/8" | 1/4" to 2-7/8" |
| Degrees Difference: | 14 degrees | 1 to 51 degrees |
| Percent S&W Shorted: | 0.17 percent | 0.1 to 0.2 percent |
| Water Difference: | 1/8" | 0" to 1/2" |
| API Difference: | 0.8 degrees | 0.0 to 1.8 degrees |

## COMPLETE GUAGES

| T&A # | Obser. N.S.V. | Purch. N.S.V. | Diff. % | Total Gauge Diff. | Water Diff. | API Diff. | Temp. Diff. Open | Temp. Diff. Close | S&W Diff. % |
|---|---|---|---|---|---|---|---|---|---|
| 001 | 222.76 | 220.21 | 1.16 | 3/4" | N/D* | 0.1 | 7 | 8 | 0.2 |
| 002 | 222.68 | 221.74 | 0.42 | 3/4" | 1/4" | 0.0 | 7 | 2 | 0.2 |
| 004 | 171.39 | 170.86 | 0.31 | 1/8" | 1/2" | 0.5 | 9 | 10 | 0.2 |
| 005 | 213.20 | 211.48 | 0.81 | 3/8" | N/D* | 0.3 | 9 | 12 | 0.2 |
| 010 | 196.18 | 192.13 | 2.11 | 2-7/8" | N/D* | 1.8 | 1 | 4 | 0.2 |
| 011 | 194.11 | 190.00 | 2.16 | 2-3/4" | 1/8" | 1.0 | 10 | N/T* | 0.2 |
| 012 | 181.14 | 179.79 | 0.75 | 1/2" | 1/4" | 1.0 | 4 | 25 | 0.2 |
| 013 | 191.52 | 190.78 | 0.39 | 1/2" | N/D* | 0.5 | 4 | 33 | 0.2 |
| 016 | 195.64 | 194.76 | 0.45 | 1/4" | N/D* | 1.6 | 12 | 50 | 0.1 |
| 018 | 212.67 | 213.22 | <0.26> | 1/4" | N/D* | 1.3 | 20 | 51 | 0.1 |
| 019 | 194.65 | 193.29 | 0.70 | 3/8" | N/D* | 0.4 | 2 | 21 | 0.1 |

## SUMMARY OF PARTIAL GAUGES

Observer's Total N.S.V.: 2006.08 barrels

Purchaser's Total N.S.V.: 1996.60 barrels

Number of Barrels Shorted: 9.48 barrels

## PARTIAL GAUGES

| T&A # | Obser. N.S.V. | Purch. N.S.V. | Diff. % | Total Gauge Diff. | Water Diff. | API Diff. | Temp. Diff. Open | Temp. Diff. Close | S&W Diff. % |
|---|---|---|---|---|---|---|---|---|---|
| 003 | 239.50 | 238.20 | 0.55 | N/D* | N/A* | 0.3 | 7 | N/G* | 0.2 |
| 006 | 287.60 | 284.49 | 1.09 | 3/8" | N/A* | 0.3 | 14 | N/G* | 0.2 |
| 007 | 280.70 | 279.12 | 0.57 | 1/8" | N/A* | 0.5 | 9 | N/G* | 0.2 |
| 008 | 285.34 | 283.25 | 0.74 | N/D* | N/A* | 0.3 | 11 | N/G* | 0.2 |
| 009 | 277.70 | 276.76 | 0.34 | N/D* | N/A* | 0.3 | 3 | N/G* | 0.2 |
| 014 | 275.59 | 275.58 | N/D* | 1/4" | N/A* | 1.9 | 9 | N/G* | 0.2 |
| 015 | 81.32 | 82.08 | 0.94*C | 1/8" | N/A* | N/D* | N/G* | 27 | 0.2 |
| 017 | 278.33 | 277.12 | 0.44 | 1/4" | N/A* | 1.1 | 1 | N/G* | 0.2 |

N/A* = Not applicable because of only partial gauges.
N/D* = No difference.
N/G* = No gauge because of only partial gauges.
N/T* = No temperature by Koch gauger.
*C = Closing gauge.

Note: For more details please refer to Appendix A.

As per instructions, on May 4, 1988 I contacted Scott Hampel of Mull Drilling Inc. regarding their leases in Eastern Colorado from which Koch Industries was the first purchaser. On May 6, 1988 I went to Wichita, Kansas and met with Mr. Hampel regarding those leases.

The criteria for selecting suitable leases for a backgauging operation were:

1. Koch Industries was the first purchaser.
2. The crude oil was shipped by truck and not by pipeline.
3. The crude oil was measured by hand gauges and not metered.
4. The production rate was high enough so that a sell was made to Koch Industries every one to two days.
5. The leases were in a somewhat remote area of Eastern Colorado with little traffic or activity near by.

On May 11-12, 1988, I and my associate, Ramie Rushing went to Eastern Colorado and physically scouted all potential leases. The leases that met the above requirements were:

| Lease # | Lease Name | Location |
|---|---|---|
| 0010309 | Brockman Farms Corp. | Lincoln County, Colorado |
| 0010421 | Braukman Farms Corp. "C" | Lincoln County, Colorado |
| 0082383 | Schluntz # 1 | Cheyenne County, Colorado |

We approached the backgauging operation with the following plan:

1. Depart Houston, Texas on May 17, 1988. Stop overnight in Wichita, Kansas.
2. On May 18, 1988, contact Mull Drilling to confirm that none of the data had changed. Depart Wichita enroute to Limon, Colorado arriving late that night.
3. On May 19, 1988 begin familiarizing and penetrating the routines of the Mull and Koch personnel at the leases and start obtaining backgauges whenever possible.
4. Allowing two days to penetrate the routines, begin or continue to obtain backguages from May 22-June 1, 1988.
5. Depart Limon, Colorado on June 1-2, 1988.
6. Arrive Houston, Texas on June 2-3, 1988.

Note: For actual schedule please refer to Appendix B.

The single most important factor during this entire operation was for no one to discover what we were doing or whom we were doing it for. We had to avoid being discovered by:

1. Koch's truck drivers, gaugers and field personnel.
2. Mull's pumpers and field personnel.
3. Other oil companies' field personnel.
4. The landowners, farmers or ranchers.
5. Local law enforcement officials.
6. Any other persons who would question our presence.

To the best of my knowledge, we were not discovered or observed by any of the above. During our stay in Colorado we tried to avoid patterns or routines in our operations. We chose to stay in Limon due to the large number of motels for a town that size as opposed to Cheyenne Wells which had only two small motels. Limon was approximately forty five to fifty minutes to the Brockman leases.

We had the opportunity to observe the Koch gaugers from a distance and make the following observations:

1. On those occasions when we were able to observe the Koch gauger we noted that the Koch gauger catch a sample, use a Tulsa thief to check for water or run a BS&W or gravity.
2. The Koch gauger normally spent ten to fifteen minutes on a lease.
3. If the production had not been switched by Mull personnel the Koch gauger would switch production, if needed.
4. At the Schluntz # 1, the Mull pumper would switch the production (there are only two tanks) without gauging the empty tank and the Koch gauger would arrive later and complete his run ticket without being able to gauge the empty tank.

It normally took the two of us.(both experienced gaugers) twenty to thirty minutes to properly gauge, temperature and sample the lease tanks depending on the situation. Yet the Koch gauger supposedly did all of the above in ten to fifteen minutes by "himself" including running a gravity and BS&W and writing his run tickets. This can only led us to speculate as to where he obtained his information. We have no clue as to where the Koch gauger obtained his closing gauges on the Schluntz #1 since in some cases the Mull pumper did not gauge the tank before switching the production.

On June 15-16, 1988 I observed the strapping of the lease tanks on the Schluntz # 1, the J. A. Farms and the # 1 Leon Allen by SGS Inspector, Bob Conway. The Brockman Farms and the Braukman Farms "C" # 1 are insulated tanks and could not be easily strapped. We strapped the tanks without anyone becoming aware of our presence. In comparing the new strapping to the old strapping there does not seem to be any significant difference in the volumes.

Note: Copies of the new and old strappings are in Appendix C.

I have tried to be as concise as possible without becoming too technical. If you should have any questions, please feel free to call me anytime.

Prepared By,

Chris Tucker

OIL MOVEMENT CONSULTANTS, INC.
P. O. Box 1176
Channelview, Texas 77530
(713) 457-6056 (504) 245-2012
*Consultants for the Oil Industry*

March 28, 1989

The following report shows the results of the backgauging operation conducted on the Anacora-Verde and Natural Gas Corporation of California's leases in Bakersfield, California from February 17, 1989 to March 3, 1989.

In comparing the individual items that we checked during this operation, we found discrepancies on 114 out of 125 items (91%) reported by Koch Industries, Inc. amounting to a total shortage of 2.43% as follows:

SUMMARY OF SHORTAGES

| | |
|---|---|
| Gauging Volume Shorted: | 1.40% |
| Strapping Volume Shorted: | 0.18% |
| Gravity Value Shorted: | 0.85% |
| Total Shortage: | 2.43% |

A detailed description of these shortages is outlined within:

## GAUGING VOLUME SHORTAGE

| | |
|---|---|
| Observer's Total N.S.V.: | 4211.29 Barrels |
| Purchaser's Total N.S.V.: | 4153.14 Barrels |
| Number of Barrels Difference: | 58.15 Barrels |
| Total Volume Shorted: | 1.40% |

| | Average | Range |
|---|---|---|
| Inches Difference: | 1/2" | N/D to 1-1/4" |
| Degrees Difference: | 6 degrees | 1 to 12 degrees |
| Percent S&W Shorted: | 0.63% | 0.20% to 1.40% |
| Water Difference: | N/A | N/A |
| API Difference: | 0.4 | -0.1 to 0.7 |

## ANALYSIS OF GAUGES

| OMC # | Observ. N.S.V. | Purch. N.S.V. | Diff. % | Total Gauge Diff. | Water Diff. | API Diff. | Temp. Diff. Open | Temp. Diff. Close | S&W Diff. % |
|---|---|---|---|---|---|---|---|---|---|
| 001 | 339.55 | 335.04 | 1.35 | 3/8" | N/A | 0.6 | 1 | 5 | 0.95 |
| 002 | 817.81 | 803.77 | 1.75 | N/D | N/A | 0.6 | 11 | 3 | 1.22 |
| 003 | 355.62 | 352.91 | 0.77 | 1/4" | N/A | <0.1> | 3 | 1 | 0.34 |
| 004 | 359.43 | 356.92 | 0.70 | 1/8" | N/A | 0.2 | 5 | 3 | 0.275 |
| 005 | 344.82 | 340.83 | 1.17 | 3/8" | N/A | 0.7 | 11 | 1 | 0.74 |
| 006 | 318.58 | 316.31 | 0.72 | 1-1/4" | N/A | 0.5 | 12 | 4 | 0.20 |
| 007 | 299.02 | 296.29 | 0.92 | 1-3/8" | N/A | 0.7 | 12 | 2 | 0.20 |
| 008 | 813.58 | 795.64 | 2.25 | 1/8" | N/A | 0.4 | 9 | 11 | 1.40 |
| 009 | 362.32 | 357.96 | 1.22 | 5/8" | N/A | 0.2 | 6 | 3 | 0.35 |
| *010 | 197.47 | 200.56 | 1.56 | 1/4" | P/G | P/G | P/G | 7 | P/G |

N/D = No difference.
N/A = Not applicable due to Koch not gauging for water.
*P/G = Partial gauge due to closing gauge only.

For more details refer to Appendix A.

## STRAPPING VOLUME SHORTAGE

On March 1, 1989 we observed the strapping of the tanks by E. W. Saybolt and Company, an independent third party. In comparing E. W. Saybolt's strappings to Koch's strappings , we found that there is a difference in the above volumes of 0.18% in Koch's favor.

For more details refer to Appendix B.

## GRAVITY VALUE SHORTAGE

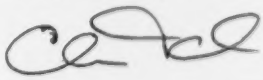
The API gravities and S&W's were ran by Caleb Brett U.S.A., Inc., a independent petrochemical and petroleum laboratory in Houston, Texas.

Two 1 quart representative samples from each lease were presented to Caleb Brett for testing. The test results from these samples were combined and averaged. Caleb Brett tested the samples without knowing the location, producer or typical test results. All testing was witnessed by Oil Movement Consultants, Inc.. According to the tests ran by Caleb Brett, Koch Industries reported higher S&W's in all cases. Koch Industries also reported lower gravities in all cases except one.

Referring to Koch Industries' crude oil pricing notification dated January 18, 1989, a penalty of twenty-five cents per degree of gravity is assessed on crude oils below a 34.0 gravity. Since the crude oils from these leases range from approximately a 19.0 to a 33.0 gravity, the penalty applies. A comparison based on the above test results and Koch's pricing notification dated January 18, 1989 shows that the crude oil is being undervalued by Koch Industries, Inc. by 0.85%.

For more details refer to Appendix C.

Prepared By,



Christopher Tucker

May 5, 1989

I, Albert Mooney have resided in Bakersfield, Ca. for 35 years. I have worked for Anacora-Verde Corp. since 1975.

The crude oil production from Anacora-Verde's leases was sold to Koch Oil Company until March 1988.

I had become very upset with Koch's gauging procedures and pratices.

I felt that Koch was:
1) Understating the gravities.
2) Overstating the S&W's.
3) Gauging the oil in their favor.
4) Temperaturing the oil in their favor.

I witnessed Koch gaugers take samples from the bottom level of the oil only. At this level the gravity is usually lower and the S&W is usually higher.

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When I protested to Koch's superintendent, Donny Alsobrook, he stated that the oil would become stratified and that they would double check it next time. However, I got the impression that they felt it wasn't an important issue.

At one point, I protested the gravity reported. The Koch gauger told me he would change the gravity this time. But from here on out he would not change any gravities.

In February 1985, arrangements were made with Chris Tucker of Oil Movement Consultants, Inc. to conduct a "backgauging operation" on leases that Koch was the purchaser.

Mr. Tucker reported the following:

1) Koch was understating the gravity.
2). Koch was overstating the SOW.
3) Koch was gauging the oil in their favor
4) Koch was temperaturing the oil in their favor
5) the Koch strapping was inaccurate in Koch's favor.

The sum of the total above was equal to an understatement of 2.43% the value of the oil.

In March 1985 Anacora-Verde began selling it's oil to Enron Oil Trading & Transportation Company.

Since Enron began purchasing the oil. The gravities have gone up and the SOW's

have dropped significantly.

Signed,

Date: May 5, 1989

Albert Mooney

Witnessed By:

Chris Tucker 5/5/89

Bill Presley 5/5/89